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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 L.C., on behalf of A.S., a minor,

11 Petitioner,

12 v.

13 ISSAQUAH SCHOOL DISTRICT,

14 Respondent.

CASE NO. C17-1365JLR

ORDER ON ADMINISTRATIVE  
APPEAL

15 **I. INTRODUCTION**

16 Petitioner L.C. appeals on behalf of her daughter, A.S., from the decision of an  
17 administrative law judge (“ALJ”) that Respondent Issaquah School District (“the  
18 District”) upheld its obligations under the Individuals with Disabilities Education Act  
19 (“IDEA”), 20 U.S.C. § 1400, *et seq.* Before the court are three motions: (1) L.C.’s  
20 motion to amend the complaint (Mot. to Am. (Dkt. # 64)); (2) L.C.’s motion for summary  
21 judgment (L.C. MSJ (Dkt. # 34)); and (3) the District’s cross-motion for summary  
22 judgment (Dist. MSJ (Dkt. # 35)). L.C. filed an opposition to the District’s summary

1 judgment motion, which also serves as a reply in support of her summary judgment  
2 motion. (L.C. Reply (Dkt. # 41).) The District filed a reply in support of its summary  
3 judgment motion. (Dist. Reply (Dkt. # 44).) The court has reviewed the administrative  
4 record, the submissions of the parties, and the applicable law. Being fully advised,<sup>1</sup> the  
5 court DENIES L.C.’s motion to amend the complaint. The court further DENIES L.C.’s  
6 motion for summary judgment, GRANTS the District’s motion for summary judgment,  
7 and AFFIRMS the decision of the ALJ.

## 8 **II. BACKGROUND**

### 9 **A. Statutory Context**

10 “The IDEA is a comprehensive educational scheme, conferring on disabled  
11 students a substantive right to public education.” *J.W. ex rel. J.E.W. v. Fresno Unified*  
12 *Sch. Dist.*, 626 F.3d 431, 432 (9th Cir. 2010) (quoting *Hoelt v. Tucson Unified Sch. Dist.*,  
13 967 F.2d 1298, 1300 (9th Cir. 1992)). In exchange for IDEA funds, school districts must

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15 <sup>1</sup> L.C. requests oral argument on her summary judgment motion. (L.C. MSJ at Title  
16 Page.) The general rule is that the court should not deny a request for oral argument made by a  
17 party opposing a motion for summary judgment unless the motion is denied. *Dredge Corp. v.*  
18 *Penny*, 338 F.2d 456, 462 (9th Cir. 1964). However, a district court’s denial of a request for oral  
19 argument on summary judgment does not constitute reversible error in the absence of prejudice.  
20 *Partridge v. Reich*, 141 F.3d 920, 926 (9th Cir. 1998) (citing *Fernhoff v. Tahoe Reg’l Planning*  
21 *Agency*, 803 F.2d 979, 983 (9th Cir. 1986)). There is no prejudice in refusing to grant oral  
22 argument where the parties have had ample opportunity to develop their legal and factual  
arguments through written submissions to the court. *Id.* (“When a party has [had] an adequate  
opportunity to provide the trial court with evidence and a memorandum of law, there is no  
prejudice [in refusing to grant oral argument] . . . .”) (quoting *Lake at Las Vegas Investors Grp.,*  
*Inc. v. Pac. Malibu Dev. Corp.*, 933 F.2d 724, 729 (9th Cir. 1991)) (alterations in *Partridge*).  
L.C. has provided the court lengthy written submissions in support of her summary judgment  
motion and in opposition to the District’s summary judgment motion. (See generally L.C. MSJ;  
L.C. Reply.) The court has determined that oral argument would not be of assistance in deciding  
L.C.’s motion, see Local Rules W.D. Wash. LCR 7(b)(4), and thus DENIES L.C.’s request for  
oral argument.

1 provide a free appropriate public education (“FAPE”) to all eligible children. *See* 20  
2 U.S.C. § 1400(d)(1)(A); *see also id.* § 1412(a)(1). A FAPE, as the IDEA defines it,  
3 includes both “special education” and “related services.” *Id.* § 1401(9). “Special  
4 education” is “specially designed instruction . . . to meet the unique needs of a child with  
5 a disability”; “related services” are the support services “required to assist a child . . . to  
6 benefit from” that instruction. *Id.* §§ 1401(26), (29). A school district must provide a  
7 child with disabilities such special education and related services “in conformity with the  
8 [child’s] individualized education program,” or “IEP.” *Id.* § 1401(9)(D).

9 “The IEP is ‘the centerpiece of the statute’s education delivery system for disabled  
10 children.’” *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, --- U.S. ---, 137  
11 S. Ct. 988, 994 (2017) (quoting *Honig v. Doe*, 484 U.S. 305, 311 (1988)). A  
12 comprehensive plan prepared by a child’s “IEP Team,” which includes teachers, school  
13 officials, and the child’s parents, an IEP must be drafted in compliance with a detailed set  
14 of procedures. 20 U.S.C. § 1414(d)(1)(B) (internal quotation marks omitted). An IEP  
15 must contain, among other things, “a statement of the child’s present levels of academic  
16 achievement,” “a statement of measurable annual goals,” and “a statement of the special  
17 education and related services to be provided to the child.” *Id.* § 1414(d)(1)(A)(i). When  
18 formulating an IEP, a school district “must comply both procedurally and substantively  
19 with the IDEA.” *M.L. v. Fed. Way Sch. Dist.*, 394 F.3d 634, 644 (9th Cir. 2005) (citing  
20 *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist., Westchester Cty. v. Rowley*, 458 U.S.  
21 176, 206-07 (1982)).

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1 When parents and educators disagree about what a child’s IEP should include, the  
2 parties may turn to dispute resolution procedures established by the IDEA. *See* 20 U.S.C.  
3 §§ 1415(e), (f)(1)(B)(i). If mediation fails to produce an agreement, the parties may  
4 proceed to what the IDEA calls a “due process hearing” before a state or local agency.  
5 *Id.* §§ 1415(f)(1)(A). In Washington State, the Office of Administrative Hearings, a state  
6 administrative agency, conducts IDEA due process hearings. *See* RCW 28A.155.020;  
7 WAC 392-101-010(2). At the end of the administrative process, the losing party may  
8 seek redress in state or federal court. 20 U.S.C. § 1415(i)(2)(A).

9 A school district may violate the IDEA in two different ways. “First, a school  
10 district, in creating and implementing an IEP, can run afoul of the Act’s procedural  
11 requirements.” *Fresno Unified*, 626 F.3d at 432 (citing *Rowley*, 458 U.S. at 206).  
12 “Second, a school district can be liable for a substantive violation by drafting an IEP that  
13 is not reasonably calculated to enable the child to receive educational benefits.” *Fresno*  
14 *Unified*, 626 F.3d at 432 (citing *Rowley*, 458 U.S. at 206-07); *see also* *Endrew F.*, 137 S.  
15 Ct. at 999.

## 16 **B. Factual Background**

### 17 1. Referral for Special Education Services

18 A.S. began attending kindergarten at an elementary school in the District in 2013.  
19 (Administrative Record (“AR”) at 2927.) In July 2015, after A.S. finished first grade,  
20 L.C. contacted Leslie Lederman, the principal of A.S.’s school, and requested that A.S.  
21 be evaluated for special education services. (*Id.* at 2916-17.) Ms. Lederman informed  
22 L.C. that the guidance team would meet in September to discuss L.C.’s request and asked

1 that L.C. provide any outside information she wanted the team to consider. (*Id.* at 2916.)  
2 L.C. subsequently arranged for A.S. to be privately evaluated by Linda Gorsuch, a retired  
3 school psychologist. (*Id.* at 2931-47, 3635.)

4 Ms. Gorsuch met with L.C. and A.S. in August 2015. (*Id.* at 2931-32.) Ms.  
5 Gorsuch conducted several assessments of A.S., including the Woodcock-Johnson IV test  
6 of cognitive abilities. (*Id.* at 2936.) Ms. Gorsuch found that A.S.’s score for general  
7 intellectual ability was within the average range. (*Id.* at 2943.) She also found that  
8 A.S.’s “[b]road [r]eading” skills and oral “[r]eading [f]luency” scores were below  
9 average. (*Id.*) Although Ms. Gorsuch did not formally diagnose A.S., Ms. Gorsuch  
10 concluded that A.S. “demonstrated a pattern of academic and cognitive strengths and  
11 weaknesses consistent with . . . the specific learning disability of dyslexia.” (*Id.*) She  
12 recommended that the District “initiate [its] own evaluation to determine [A.S.’s]  
13 eligibility for special education services,” including services in the areas of “written  
14 language and math.” (*Id.* at 2944.)

15 The guidance team from A.S.’s school met with L.C. and A.S.’s father, J.S.,  
16 (collectively, “the Parents”), at the beginning of A.S.’s second grade year. (*Id.* at  
17 2918-24.) At the meeting were Ms. Lederman; Sue Schoot, a special education teacher;  
18 Stacie Schultz, a speech language pathologist; Devon Heras, a school psychologist; and  
19 Jessica Clark, A.S.’s general education teacher. (*Id.* at 2953.) The guidance team  
20 discussed the results of Ms. Gorsuch’s evaluation and the Parents’ concerns about A.S.’s  
21 academic progress. (*Id.* at 2923.) The guidance team recommended that A.S. undergo an

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1 initial evaluation to determine whether she was eligible for special education services.  
2 (*Id.* at 2925; *see also id.* at 2967.)

3       2. 2015 Special Education Evaluation

4       In October 2015, the evaluation team examined its existing data on A.S. and  
5 conducted several additional assessments. Ms. Heras, the school psychologist, reviewed  
6 A.S.'s progress in general education, focusing on prior standardized test scores, her  
7 first-grade report cards, and input from Ms. Clark, A.S.'s second-grade teacher. (*Id.* at  
8 2967, 2969.) Ms. Heras also examined A.S.'s social-emotional functioning through  
9 ratings submitted by L.C. and Ms. Clark under the Behavior Assessment System for  
10 Children–Second Edition (“BASC-2”), a standardized assessment. (*Id.* at 2971.) A.S.  
11 did not exhibit any clinically significant behaviors under the BASC-2. (*Id.* at 2971-72.)  
12 In addition, Ms. Heras administered to A.S. the Differential Abilities Scale–Second  
13 Edition (“DAS-II”), a cognitive development test for school-age children. (*Id.* at 2974.)  
14 She concluded that A.S.'s cognitive functioning was in the average range. (*Id.* at  
15 2973-75; *see also id.* at 4408 (showing that A.S.'s DAS-II verbal, nonverbal reasoning,  
16 spatial, and general conceptual abilities scores were all average).)

17       Separately, Ms. Schoot, the special education teacher, assessed A.S.'s academic  
18 performance in reading, writing, and math. (*Id.* at 2977.) Ms. Schoot administered the  
19 Kaufman Test of Educational Achievement–Third Edition (“KTEA-III”), which allowed  
20 Ms. Schoot to compare A.S.'s current academic performance with a national sample of  
21 her peers. (*Id.*) A.S. scored in the average range for all subjects, except for the reading  
22 composite and reading comprehension components, in which she obtained below-average

1 scores. (*Id.*) In summarizing A.S.’s KTEA-III assessment, the evaluation team stated  
2 that A.S. demonstrated “average basic reading skills but below average reading  
3 comprehension skills.” (*Id.* at 2978.) The evaluation team thus recommended that A.S.  
4 “receive specially designed instruction in reading comprehension and reading fluency.”  
5 (*Id.*) The team also recommended that A.S. receive specially designed instruction in  
6 written expression. (*Id.* at 2979.)

7         Additionally, Ms. Schultz, the speech language pathologist, assessed A.S.’s  
8 communication skills. (*Id.* at 2980.) Ms. Schultz administered two standardized  
9 evaluations: (1) the Clinical Evaluation of Language Fundamentals–Fifth Edition  
10 (“CELF-5”), which helps identify language and communication disorders in students; and  
11 (2) the Goldman Fristoe Test of Articulation–Second Edition, which considers a child’s  
12 ability to accurately produce a speech sound. (*Id.*) A.S. scored in the average range on  
13 both tests. (*Id.*) Ms. Schultz also obtained feedback about A.S.’s communication from  
14 A.S.’s teachers and observed A.S. in the classroom. (*Id.* at 2981-82.) In light of the  
15 standardized tests, her classroom observations, and teacher input, Ms. Schultz concluded  
16 that “[A.S.] does not demonstrate a disability in the area of communication at this time.”  
17 (*Id.* at 2982.)

18         Finally, a District occupational therapist evaluated A.S.’s fine motor skills. (*Id.* at  
19 2983.) The occupational therapist examined several writing samples Ms. Clark provided  
20 and administered to A.S. the Bruininks-Oseretsky Test of Motor Proficiency–2. (*Id.* at  
21 2984.) She concluded that A.S.’s fine motor skills fell within the average range and did  
22 not recommend specialized instruction in that area. (*Id.*) Nonetheless, she suggested that

1 A.S. “be given accommodations such as lined paper for assignments and early access to  
2 keyboarding.” (*Id.*)

3       Following these assessments, the District concluded that A.S. was eligible for  
4 special education services under the eligibility category of “Specific Learning  
5 Disability.”<sup>2</sup> (*Id.* at 2961.) In particular, the evaluation team found that “[A.S.] is  
6 developing reading and written expression skills at a rate and level significantly below  
7 her same age peers[.]” (*Id.*) As a result, the team concluded that A.S. “qualifie[d] for  
8 specially designed instruction in the areas of reading and writing as well as  
9 supplementary aides and services to support her in the general education classroom.”  
10 (*Id.*) The evaluation team further concluded that A.S. did not require specially designed  
11 instruction in the areas of math, communication, fine motor skills, or social-emotional  
12 functioning. (*Id.* at 2993.) Finally, the team recommended several specific  
13 accommodations for A.S., including, among other measures, preferential seating, oral test  
14 instruction, and access to a keyboard for written assignments. (*Id.* at 2968.) The District  
15 documented the initial evaluation in a written report. (*Id.* at 2960-94.)

16       On October 15, 2015, A.S.’s evaluation team met with the Parents to review  
17 A.S.’s initial evaluation. (*Id.* at 2993.) The evaluation team provided the Parents a copy  
18 of the draft evaluation report, which the Parents signed at the meeting. (*Id.* at 2964.) The  
19 Parents requested that A.S. undergo an assistive technology assessment, and the team  
20 agreed. (*Id.* at 2994.) The District later sent the Parents a prior written notice (“PWN”)

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22       <sup>2</sup> The IDEA recognizes “specific learning disabilit[y]” as a category of eligibility for  
special education services. 20 U.S.C. § 1401(3)(A)(i).



1 that summarized the meeting. (*Id.* at 2993-94.) The PWN indicated that, within 30 days,  
2 the District would hold a meeting with the Parents to formulate an IEP for A.S. (*Id.*)

3 Shortly thereafter, the District conducted an “assessment revision” to determine  
4 whether A.S. would benefit from the use of assistive technology in the classroom. (*Id.* at  
5 3002.) An assistive technology specialist evaluated A.S. using Co:Writer, a software  
6 program designed to help students write complete sentences. (*Id.*) The specialist  
7 recommended that A.S. be given access to a computer with word prediction, spelling  
8 support, and text-to-speech software when completing writing assignments. (*Id.* at 3003.)

### 9 3. 2015 IEP

10 On November 5, 2015, A.S.’s entire IEP team met to discuss the assistive  
11 technology evaluation and A.S.’s IEP. (*Id.* at 3005.) The IEP team included Ms. Schoot,  
12 Ms. Clark, Ms. Heras, Ms. Lederman, Tara Slinn, the District’s Director of Elementary  
13 Special Services, and the assistive technology specialist. (*Id.* at 3008.) L.C. was ill and  
14 did not attend, but J.S. was there. (*Id.*; *see also* Tr. 489:11-15, 1844:6-15.<sup>3</sup>) After  
15 reviewing the assistive technology assessment, J.S. agreed that A.S. be given access to  
16 Co:Writer in the classroom. (*Id.* 487:16-488:20.) In addition, the team reviewed with  
17 J.S. a draft of A.S.’s IEP. (*Id.* 1845:4-11.)

18 A.S.’s 2015 IEP began on November 5, 2015. (AR at 3008.) The IEP identified  
19 A.S.’s “[d]isability” category as “Specific Learning Disabilities.” (*Id.*) In addition to  
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21 <sup>3</sup> The transcript from the due process hearing is found in Volume 1 through Volume 10 of  
22 the administrative record. When citing the transcript, the court cites the page number at the  
bottom-right corner of the page and specifies the relevant line numbers.

1 summarizing the District’s assessment of A.S., the IEP noted that “[A.S.’s] parents  
2 reported that [A.S.] has dyslexia and difficulty with language” and explained that Ms.  
3 Gorsuch had concluded that “[A.S.] demonstrated a pattern of academic and cognitive  
4 strengths and weaknesses consistent with . . . the specific learning disability of dyslexia.”  
5 (*Id.* at 3011.)

6 The IEP also identified the special education services and accommodations A.S.  
7 required for the 2015-16 school year. Under the IEP, A.S. would receive specially  
8 designed instruction in reading for 20 minutes per day, five times per week, as well as  
9 specially designed instruction in writing for 20 minutes per day, five times per week. (*Id.*  
10 at 3026.) A.S. would spend the remainder of the school day in the general education  
11 setting. (*Id.*) Moreover, A.S. would receive the following accommodations: visual aids,  
12 a word processor or computer with word prediction and text-to-speech software,  
13 audiobooks, BrightLines paper, redirection to task as needed, preferential seating, extra  
14 time for writing assignments, modifications in homework and classwork, modified grades  
15 in content areas impacted by her disability, and certain testing accommodations. (*Id.* at  
16 3023.) Finally, the IEP set four annual goals for A.S. in reading, reading comprehension,  
17 and writing. (*Id.* at 3020-21.) At the administrative hearing, Ms. Schoot and Ms. Clark  
18 testified that, during the 2015-16 school year, they consistently provided A.S. the  
19 accommodations required by her IEP. (*See, e.g.*, Tr. 720:15-724:4, 1850:13-1851:9.)

#### 20 4. 2015-16 School Year

21 In mid-January 2016, L.C. contacted Ms. Lederman, the principal, and asked to  
22 schedule an “issue review” for A.S. (AR at 3038.) Specifically, L.C. stated that she had

1 concerns about A.S.’s “[IEP] goals and progress.” (*Id.* at 3037.) On February 2, 2016,  
2 the Parents met with A.S.’s IEP team. (*Id.* at 3044-48.) At the meeting, L.C. expressed  
3 that she “fe[lt] as though [A.S.] [was] not making positive changes.” (*Id.* at 3044.) In  
4 response, Ms. Schoot stated that A.S. was starting to self-correct as she read, that A.S.’s  
5 reading fluency was progressing, and that A.S.’s reading comprehension had improved.  
6 (*Id.* at 3044-45.) Ms. Schoot also stated that, in a period of just 40 days, A.S. had moved  
7 up two levels, from level “G” to level “I,” in the District’s Fountas & Pinell (“F&P”)   
8 reading assessment program—a progression that typically developed over the course of  
9 10 to 12 weeks. (*Id.* at 3044.) Similarly, Ms. Clark expressed that A.S. had made  
10 progress in the general education setting. (*Id.* at 3046.)

11 During the meeting, the Parents made, and A.S.’s IEP team considered, several  
12 requests related to A.S.’s IEP:

- 13 • The Parents asked that they be allowed to “drop in” during A.S.’s general  
14 education classes so that they could monitor A.S. (*Id.* at 3049.) The IEP team  
15 explained that, consistent with District policy, the Parents could schedule times  
16 to volunteer or visit but could not drop in at undesignated times because such  
17 visits would disrupt the learning environment. (*Id.* at 3050.)
- 18 • The Parents requested that the District reassess A.S.’s communication skills.  
19 (*Id.*) The IEP team explained that, given the results of the initial evaluation of  
20 a few months earlier, A.S. did not qualify for specially designed instruction in  
21 communication; however, Ms. Heras stated that Ms. Schultz, the speech  
22 language pathologist, would contact the Parents about the request. (*Id.*)

- 1 • The Parents requested that A.S. receive full-time, one-on-one support in the  
2 special education classroom. (*Id.* at 3049.) The IEP team discussed this  
3 request and concluded that, because A.S. was benefitting from small-group  
4 instruction, one-on-one instruction was unnecessary and “too restrictive.” (*Id.*  
5 at 3050.)
- 6 • The Parents requested that A.S. work with a tutor over the summer break. (*Id.*  
7 at 3049.) Ms. Lederman explained that, later in the school year, the District  
8 would share with all parents information about fee-based summer instruction.  
9 (*Id.* at 3050.)
- 10 • The Parents requested that A.S. be required to use Co:Writer at all times. (*Id.*  
11 at 3049.) The IEP team explained that they would encourage A.S. to use  
12 Co:Writer but could not force her to do so. (*Id.* at 3050.)
- 13 • The Parents requested that, when a substitute was present in Ms. Clark’s  
14 classroom, A.S. spend the entire day in the special education classroom or a  
15 different general education teacher’s classroom. (*Id.* at 3049.) The IEP team  
16 discussed this request but denied it, reasoning that “[i]t [was] important that  
17 [A.S.] be with her peers in a least restrictive environment.” (*Id.* at 3050.) For  
18 the same reasons, the IEP team denied the Parents’ request that A.S. remain in  
19 the general education classroom whenever a substitute was teaching on Ms.  
20 Schoot’s behalf. (*Id.*)
- 21 • The IEP team considered and denied the Parents’ requests that L.C. be allowed  
22 to work with A.S. in the special education classroom, that A.S.’s teachers not

1 correct her work, and that L.C. be allowed to read with A.S. in the general  
2 education classroom five days per week. (*Id.*)

- 3 • The Parents requested that Ms. Schoot and Ms. Clark be trained in the  
4 Orton-Gillingham Approach to reading instruction. (*Id.* at 3049.) The IEP  
5 team explained that school staff would “utiliz[e] the curricula and  
6 methodologies as trained by the District”; however, Ms. Schoot agreed to  
7 review an Orton-Gillingham manual. (*Id.* at 3050).
- 8 • The IEP team agreed that A.S. would be given a BrightLines notebook to use  
9 at home, that A.S. would not participate in state or district standardized testing,  
10 that Ms. Clark would encourage A.S. to use Co:Writer in the general education  
11 classroom, that A.S. would not be provided crossword or scrambled puzzles,  
12 and that A.S. would not work with parent volunteers in the general education  
13 classroom. (*Id.* at 3051.)
- 14 • Finally, the IEP team agreed to allow L.C. to schedule a time to speak to A.S.’s  
15 classmates about dyslexia. (*Id.*)

16 The IEP team memorialized the Parents’ requests in a PWN. (*Id.* at 3049-51.)

17 The Parents did not request another IEP meeting during the 2015-16 academic year. (Tr.  
18 1859:2-5.) During that time, the District provided the Parents reports on A.S.’s progress  
19 toward her annual IEP goals. (AR at 3030-34.)

## 20 5. 2016 IEP

21 Soon after the 2015-16 school year ended, L.C. wrote Ms. Lederman and  
22 requested that the District hold another IEP team meeting “ASAP” because she did not

1 want A.S. to wait until October or November to receive “help.” (*Id.* at 3055.) Ms.  
2 Lederman responded that, although A.S.’s IEP review would occur after the school year  
3 started, A.S. would still receive IEP services in September. (*Id.*) A few days later, the  
4 Parents e-mailed the District Superintendent, Ron Thiele, and other District personnel.  
5 (*Id.* at 3054.) The Parents stated that they “ha[d] been unsuccessful in resolving [a]  
6 dispute” with A.S.’s school “concerning [A.S.’s] IEP and her placement” and requested  
7 mediation services before the beginning of the school year. (*Id.*) In response, Melissa  
8 Madsen, the District’s Executive Director of Special Services, sent the Parents the contact  
9 information for Sound Options Group, which could provide mediation at no cost to the  
10 Parents. (*Id.* at 3053.) After speaking with Sound Options, L.C. informed the District  
11 that they wished to take part in a facilitated IEP team meeting before the school year  
12 began. (*Id.*)

13 The Parents met with A.S.’s IEP team on August 31, 2016. (*Id.* at 3068, 3327.) A  
14 Sound Options facilitator participated in the meeting. (*Id.* at 3068.) The IEP team agreed  
15 to take new baseline data on A.S. and prepare revised IEP goals at the beginning of the  
16 school year. (Tr. at 1639:1-6, 1835:17-23; AR at 3076, 3079, 3327-41.) After the  
17 meeting, L.C. emailed Mr. Thiele and reported that the Parents were satisfied with the  
18 meeting. (*Id.* at 3062.) In fact, L.C. expressed that meeting was “fabulous” and stated  
19 that, “[f]or the first time in three years,” she had “hope for [A.S.] and the school year.”  
20 (*Id.*)

21 On October 27, 2016, the District convened an IEP meeting between the Parents  
22 and A.S.’s IEP team. (*Id.* at 3087.) Prior to the meeting, the District sent the Parents a

1 draft IEP for the Parents' review. (Tr. 1860:21-1861:13.) At the meeting were the  
2 Parents; Ms. Lederman; Ms. Schoot; Ms. Madsen; Ms. Heras; Ms. Slinn; Christina  
3 Desmond, a speech language pathologist; and Amy Van de Vord, A.S.'s third grade  
4 general education teacher. (AR at 3089.) The IEP team discussed with the Parents  
5 A.S.'s educational performance and progress toward her 2015 IEP goals. (*Id.* at  
6 3104-11.) That information was also memorialized in the IEP. (*Id.* at 3089-101.)

7 The IEP team addressed in detail A.S.'s educational performance in reading,  
8 writing, and math. (*See id.*) With respect to reading, the IEP team noted that, as of  
9 October 2016, A.S. was reading at an instructional level "J," as measured by the F&P  
10 curriculum. (*Id.* at 3091.) A.S. had thus improved several instructional levels since the  
11 2015 initial assessment, when she was reading at an instructional level "G," but still did  
12 not meet the grade-level expectation to read between instructional levels "M" and "O."  
13 (*Id.*) With respect to writing, the IEP team noted that A.S. wrote stories quickly but  
14 struggled with spelling, punctuation, and capitalization. (*Id.*) Ms. Van de Vord observed  
15 that A.S. used Co:Writer to support her spelling, but Co:Writer "sometimes interrupt[ed]  
16 her thought process." (*Id.*) With respect to math, the IEP team stated that, when A.S.  
17 worked independently, she was often unable to correctly read or work through multi-step  
18 math problems without support. (*Id.*) Separately, Ms. Van de Vord stated that A.S. is a  
19 good listener, "very sweet and kind to her peers," and "not shy to participate." (*Id.* at  
20 3092.)

21 The IEP team also documented A.S.'s progress toward her 2015 IEP goals. (*Id.* at  
22 3092-93.) Ms. Schoot explained that, as of October 2016, A.S. could correctly read 94%

1 of the words at an instructional level “J.” (*Id.* at 3092.) Accordingly, A.S. had not met  
2 her 2015 IEP goal to improve her reading accuracy from 94% to 98%; however, she had  
3 progressed to a more advanced reading level without sacrificing accuracy. (*Id.*) Ms.  
4 Schoot also noted that A.S. could correctly answer eight of 12 reading comprehension  
5 questions at the second-grade level and 13 of 20 questions at the third-grade level. (*Id.* at  
6 3092-93.) A.S. had thus progressed toward, but ultimately fallen short of, her 2015 goal  
7 to correctly answer 83% of a set of third-grade level reading comprehension questions.  
8 (*Id.* at 3092.) In writing, Ms. Schoot explained that A.S. could now write topic sentences  
9 but continued to work toward writing paragraphs with supporting sentences and a  
10 conclusion. (*Id.* at 3093.) As a result, A.S. had yet to meet her 2015 goal of writing four  
11 grade-appropriate sentences. (*Id.*) Finally, Ms. Schoot noted that, when using a  
12 computer with teacher support, A.S. used correct punctuation in her writing assignments  
13 50% of the time. (*Id.*) According to Ms. Schoot, A.S. had thus satisfied her 2015 goal to  
14 increase her punctuation accuracy from 0% to 50%; however, the 2015 IEP goal does not  
15 indicate that it would be measured by A.S.’s work with teacher support. (*Id.*; *see also id.*  
16 at 3021.) In sum, A.S. had either met or progressed toward all four of her 2015 IEP  
17 goals.

18       Moreover, the 2016 IEP identified A.S.’s accommodations and modifications for  
19 the 2016-17 school year. (*Id.* at 3097-98.) With respect to accommodations, the IEP  
20 required that A.S. have daily access to audiobooks in the general education classroom,  
21 daily use of BrightLines paper in all classrooms, daily use of visuals in all classrooms,  
22 additional time to complete tasks in all classrooms, and an electronic or adult reader to



1 read text that did not measure reading ability. (*Id.* at 3097.) In addition, A.S.’s general  
2 education teacher was to provide A.S. preferential seating and read aloud to A.S. any  
3 materials and tests “to verify [A.S.] kn[ew] what[] [was] expected of her.” (*Id.*) With  
4 respect to modifications, A.S.’s general education teacher was to refrain from correcting  
5 A.S.’s work in writing and was not to ask A.S. to read aloud in a large group, among  
6 other measures. (*Id.* at 3097-98.) Finally, the 2016 IEP provided that A.S. would  
7 undergo 30 minutes per day of specially designed instruction in reading and 30 minutes  
8 per day of specially designed instruction in writing, an increase of 10 minutes per day in  
9 each subject. (*Id.* at 3100; *see also id.* at 3026.) The 2016 IEP also set new goals in  
10 reading and writing. (*Id.* at 3092-93.)

11 Additionally, at the October 27, 2016, IEP meeting, the Parents made, and the IEP  
12 team considered, several specific requests concerning A.S.’s IEP. (*Id.* at 3102-03.)

13 Specifically:

- 14 • The Parents requested that the District reassess A.S. in math to determine  
15 whether she qualified for specially designed instruction in that area. (*Id.* at  
16 3103.) The IEP team agreed. (*Id.*; *id.* at 3107.)
- 17 • The Parents requested that the District reassess A.S. in communication. (*Id.* at  
18 3102.) The IEP team discussed the request but decided a communication  
19 reassessment was not warranted “because previous testing by the School  
20 District was strong and valid” and “[t]here [was] no reason to believe that  
21 [A.S.’s] scores would drop significantly enough to qualify her for  
22 speech/language services.” (*Id.* at 3103, 3108.)

- 1 • The Parents asked that the District change A.S.’s IDEA disability category  
2 from “Specific Learning Disability” to “Dyslexia.” (*Id.* at 3102.) The IEP  
3 team rejected the request, explaining that “Dyslexia” is not a qualifying  
4 disability category. (*Id.*)
- 5 • The Parents requested that A.S. be “reevaluated by district specialists” outside  
6 of her elementary school. (*Id.*) The IEP team rejected the request because the  
7 school personnel who had evaluated A.S. did so in accordance with District  
8 training on the administration of standardized assessments. (*Id.* at 3103.)
- 9 • The Parents requested that A.S. receive extended school year (“ESY”)  
10 services. (*Id.* at 3102.) The IEP team rejected this request because the District  
11 makes decisions regarding ESY in the spring and “there [was] no data to  
12 suggest that [A.S.] require[d] the service at [that] time.” (*Id.* at 3103.)
- 13 • The Parents requested that A.S. receive one-on-one support in the general  
14 education classroom. (*Id.* at 3102.) The team rejected the request because  
15 “[t]here was . . . no data” to suggest that A.S. required such assistance and  
16 explained that “interventions in the classroom should be implemented before  
17 making such a decision.” (*Id.* at 3103.)
- 18 • The Parents requested that the District inform them of the credentials of the  
19 educational assistants who support students in the special education classroom.  
20 (*Id.* at 3102.) The IEP assured the Parents that the educational assistants were  
21 properly qualified and trained but stated that the District “is not at liberty to  
22 share the qualifications of staff members to parents.” (*Id.* at 3103.)

- The Parents requested that A.S.’s IEP be revised to require the District to instruct A.S. through the Orton-Gillingham method. (*Id.* at 3102.) The IEP team rejected the request on the ground that “[t]he District does not identify specific programs in the IEP goals.” (*Id.* at 3103.)

At the end of the October 27, 2016, IEP meeting, the Parents signed the IEP but indicated that they did not agree with the IEP. (*Id.* at 3089 (showing that L.C. wrote “dissent” next to her signature and J.S. wrote “not agree fully” next to his).) The District provided the Parents a PWN, dated November 4, 2016, which proposed to implement the IEP on November 8, 2016. (*Id.* at 3102-03.) The PWN also memorialized the Parents’ requests and the District’s reasons for declining to implement those requests. (*Id.*)

#### 6. 2016 Assessment Revision in Math

The District reevaluated A.S. in math in November 2016. (*Id.* at 3626.) In doing so, the District reviewed A.S.’s performance on District standardized tests in the first and second grades. (*Id.* at 3626-27.) The District also obtained feedback from A.S.’s general education teacher, Ms. Van de Vord, who reported that A.S. was “performing below average in the area of math.” (*Id.* at 3627.) In addition, the District re-administered the KTEA-3. (*Id.* at 3628.) A.S. scored in the 27th percentile in the math composite, which was in the average range; the 53rd percentile in math concepts and applications, which was in the average range; and the 14th percentile in math computation, which was below average. (*Id.*) The District documented A.S.’s math reassessment in a written report. (*Id.* at 3626-30.)

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1       The District invited the Parents to discuss the results of A.S.’s math reassessment  
2 by phone, e-mail, and letter, but the Parents declined. (*Id.* at 3116-17.) On November  
3 29, 2016, A.S.’s IEP team met without the Parents and determined that, “[g]iven the  
4 results of the KTEA-3, progress in her general education class, performance on  
5 district-wide assessments, performance on curriculum based measures, and [the] input of  
6 her teacher,” A.S. did not qualify for specially designed math instruction at that time. (*Id.*  
7 at 3121.) Specifically, the IEP team noted that A.S.’s cognitive scores were “not severely  
8 discrepant” from her KTEA-3 scores in November 2016, “indicating that she does not  
9 have a Specific Learning Disability in math.” (*Id.*) A.S.’s IEP team concluded that  
10 A.S.’s math needs could be satisfied through accommodations in the general education  
11 setting. (*Id.*) The District identified potential accommodations in a December 1, 2016,  
12 PWN, which documented the November 29, 2016, meeting, and sent the PWN to the  
13 Parents. (*Id.* at 3632-33; *see also* Tr. 1870:12-21.) The Parents declined to amend the  
14 2016 IEP to reflect the proposed accommodations. (Tr. 1870:21-25.)

#### 15       7. The District’s and the Parents’ Due Process Hearing Requests

16       A few hours after the October 27, 2016, IEP meeting, the Parents requested that  
17 the District provide an independent education evaluation (“IEE”) of A.S. at the District’s  
18 expense.<sup>4</sup> (AR at 3114-15.) In an email to A.S.’s IEP team, L.C. explained that the  
19 Parents sought the IEE for two reasons: she alleged that the District “[was] refusing to  
20 allow [A.S.] to be tested or to be given services based on her language,” and she alleged

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21  
22       <sup>4</sup> An IEE is an evaluation conducted by a qualified examiner who is not employed by the  
student’s school district. *See* 34 C.F.R. § 300.502(a)(3)(i).

1 that the District “[was] refusing to differentiate A.S.’s disability by giving her an  
2 individualized treatment plan.” (*Id.* at 3115.) The District subsequently filed a request  
3 with the Office of Superintendent of Public Instruction (“OSPI”) for an administrative  
4 hearing to demonstrate that the District was not obligated to fund an IEE because A.S.’s  
5 2015 initial evaluation was appropriate.<sup>5</sup> (*Id.* at 2635-38; *see also* Tr. 1447:5-12.) OSPI  
6 forwarded the District’s due process hearing request to the state Office of Administrative  
7 Hearings.

8       Shortly thereafter, the Parents filed a due process hearing request, alleging that the  
9 District denied A.S. a FAPE during the 2015-16 and 2016-17 school years. (AR at  
10 2904-07.) In addition, the Parents alleged that the District had failed to adequately  
11 reassess A.S. in math in November 2016 and requested that the District fund a second  
12 IEE. (*Id.* at 2594.) The District amended its hearing request to reflect the Parents’  
13 disagreement with the 2016 math reassessment. (*Id.*) The Office of Administrative  
14 Hearings consolidated the Parents’ and the District’s due process hearing requests. (*Id.* at  
15 2593.) The matter was assigned to the ALJ. (*See id.* at 2624.)

## 16 **C. The Administrative Hearing**

### 17 **1. Prehearing Matters**

18       The ALJ held several prehearing conferences to discuss the Parents’ discovery  
19 requests and define the issues for the hearing. (*See id.* at 2453-64, 2498-04, 2539-55,  
20 2593-606.) On February 2, 2017, the ALJ issued a prehearing order that identified four

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21       <sup>5</sup> If a school district disagrees with a parent’s request that the district fund an IEE, the  
22 district must file a request for a due process hearing to show that its own evaluation is  
appropriate. *See* 34 C.F.R. § 300.502(b)(2).

1 issues for the hearing. (*Id.* at 2560-63.) First, the ALJ was to determine whether the  
2 District denied A.S. a FAPE by, among other things, failing to develop or implement  
3 appropriate IEPs. (*Id.* at 2460-62.) Second, the ALJ was to determine whether the  
4 District appropriately evaluated A.S. in 2015, and, if not, whether the District should pay  
5 for an IEE. (*Id.* at 2463.) Third, the ALJ was to determine whether the District  
6 appropriately reassessed A.S. in math in November 2016, and, if not, whether the District  
7 should pay for an IEE. (*Id.*) Finally, the ALJ was to determine whether the Parents were  
8 entitled to their requested remedies, which included training in the Orton-Gillingham  
9 method for school staff who worked with A.S. and payment of A.S.’s tuition at a school  
10 that specializes in teaching children with dyslexia.<sup>6</sup> (*Id.* at 2462-63.)

## 11 2. The Hearing

12 The hearing began on March 17, 2017. Although the hearing was originally  
13 scheduled for five days (*see id.* at 2445), the ALJ heard testimony over the course of 10  
14 days (*see id.* at 2641). In total, the parties called 11 witnesses: A.S.; J.S.; Ms. Clark; Ms.  
15 Madsen; Ms. Schoot; Ms. Heras; Ms. Slinn; Ms. Van de Vord; Ms. Desmond; Shelly Fry,  
16 a District assessment specialist; and Cheryl Anthony, the Parents’ expert witness. (*Id.* at  
17 2642.)

18 The ALJ heard extensive testimony from Ms. Anthony. (*See* Tr.  
19 1491:14-1601:15.) Ms. Anthony has a master’s degree in education, a Washington State  
20 teacher certification with a K-12 reading endorsement, and “training in assessing

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21  
22 <sup>6</sup> Since September 2017, A.S. has attended a school that specializes in teaching children  
with dyslexia. (L.C. MSJ at 4.)

1 dyslexia.” (AR at 5068.) She is president of Successful Learning Educational Services,  
2 LLC, “an educational service business providing screening for dyslexia and dysgraphia,  
3 and direct services” in specific subject areas. (*Id.*) Ms. Anthony does not hold a special  
4 education endorsement and did not personally assess A.S. (Tr. 1569:7-13, 1571:9-10,  
5 1582:6-16.)

6 Ms. Anthony offered several opinions at the hearing. First, Ms. Anthony testified  
7 that she “would say” that A.S. has “severe to profound” dyslexia. (*Id.* 1503:14-16; *see*  
8 *also id.* 1573:19-1574:5.) Ms. Anthony acknowledged, however, that she was not  
9 qualified to diagnose A.S. and primarily based her opinion upon her understanding that  
10 Ms. Gorsuch had diagnosed A.S. with dyslexia. (*Id.* 1574:7-9, 1575:17-20.) Ms.  
11 Anthony also opined that A.S. did not receive a FAPE in the 2015-16 school year  
12 because her IEP goals were targeted to “fluency and reading comprehension skills  
13 without addressing the foundation that has to be in place for those other goals to be met.”  
14 (*Id.* 1595:14-20.) Similarly, Ms. Anthony opined that A.S. did not receive a FAPE in the  
15 2016-17 school year because some of her IEP goals “were unattainable for a person who  
16 struggles the way that [A.S.] struggles” and did not address her foundational needs. (*Id.*  
17 1596:11-19.)

### 18 3. The ALJ’s Decision

19 On June 14, 2017, the ALJ issued her Findings of Fact, Conclusions of Law, and  
20 Order. (AR at 2641-2678 (“ALJ Order”).<sup>7</sup>) The ALJ concluded that the District satisfied

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21  
22 <sup>7</sup> When citing the ALJ’s order, the court specifies whether it refers to the ALJ’s findings  
of fact (“FF”) or conclusions of law (“CL”), followed by the relevant paragraph number. Where

1 its burden to show that the District appropriately evaluated A.S. in 2015 and in 2016, and  
2 that the Parents were therefore not entitled to IEEs at the District's expense. (*Id.* CL  
3 ¶¶ 21-23.) In addition, the ALJ concluded that the Parents failed to prove that the District  
4 denied A.S. a FAPE in 2015 or 2016. (*Id.* CL ¶¶ 36-67.) The ALJ thus denied the  
5 Parents' requested remedies. (*See id.* at 38.)

#### 6 **D. Procedural History**

7 The Parents filed a petition for judicial review of the ALJ's decision.<sup>8</sup> (Compl.  
8 (Dkt. # 6).) In the complaint, the Parents named as Defendants Mr. Thiele, the District  
9 Superintendent, and Ms. Madsen, District's Executive Director of Special Services. (*Id.*  
10 at 1.) Neither Mr. Thiele nor Ms. Madsen were defendants in the administrative hearing.  
11 Additionally, the Parents sought leave to amend their complaint to add three other  
12 individuals—Ms. Lederman, Ms. Schoot, and Ms. Heras—as Defendants. (11/28/17  
13 Mot. to Am. (Dkt. # 22) at 2.) The court denied the Parents' motion to amend and  
14 dismissed Mr. Thiele and Ms. Madsen as individual Defendants on the ground that the  
15 IDEA does not provide for individual liability. (3/28/18 Order (Dkt. # 42).) The Parents  
16 subsequently moved for reconsideration of the court's decision to dismiss Mr. Thiele and  
17 Ms. Madsen. (1st MFR (Dkt. # 51); 2d MFR (Dkt. # 56).) The court denied the Parents'  
18 motions for reconsideration. (*See Min. Entry* (Dkt. # 60).)

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20 \_\_\_\_\_  
21 no paragraph number corresponds to the cited material, the court cites the page number of the  
22 ALJ's order.

22 <sup>8</sup> J.S. has since withdrawn from the appeal. (Mot. to Withdraw (Dkt. # 62); 3/29/19  
Order (Dkt. # 63).)



1 L.C.'s motion for summary judgment challenges both: (1) the ALJ's conclusion  
2 that the District carried its burden to show that the Parents were not entitled to an IEE at  
3 public expense; and (2) the ALJ's conclusion that the Parents failed to carry their burden  
4 to show that the District denied A.S. a FAPE in the 2015-16 or 2016-17 school year. (*See*  
5 *generally* L.C. MSJ.) The District contends that the court should affirm the ALJ's order  
6 in its entirety. (*See generally* Dist. MSJ.)

7 The court now considers the motions.

### 8 **III. ANALYSIS**

#### 9 **A. Motion to Amend Complaint**

10 While the parties' cross-motions for summary judgment were pending, L.C. filed a  
11 motion to amend the complaint. (*See* Mot. to Am.) L.C. represents that she seeks to  
12 amend the complaint to "correct inadvertent omissions," "include new claims [for]  
13 relief," and "amend the parties involved," among other reasons. (*Id.* at 3.) She also  
14 argues that leave to amend is appropriate under Federal Rule of Civil Procedure 15. (*Id.*  
15 at 3); *see also* Fed. R. Civ. P. 15. Alongside her motion, L.C. filed a 54-page proposed  
16 "Amended . . . Complaint Brief" and several pages of additional materials. (*See* Mot. to  
17 Am. at 6-86.) Those materials include declarations signed by non-party parents whose  
18 children attended school in the District. (*See id.* at 80-86.) The District opposes L.C.'s  
19 motion. (Mot. to Am. Resp. (Dkt. # 65).)

20 Although L.C. states that she seeks to amend the complaint, the motion is in  
21 substance a motion for leave to file an amended motion for summary judgment. (*See*  
22 Mot. to Am. at 6-60.) Federal Rule of Civil Procedure 15 governs the amendment of

1 pleadings, not motions. *See* Fed. R. Civ. P. 15. The court thus does not reach L.C.’s  
2 arguments under Rule 15. In any event, the court finds that L.C. is not entitled to leave to  
3 amend her motion for summary judgment. The issues before the court are fully briefed,  
4 and L.C. does not explain why she should be allowed to revise her summary judgment  
5 motion at this late hour. (*See generally* Mot. to Am.) Moreover, in administrative  
6 appeals under the IDEA, the court may consider “additional evidence” outside the  
7 administrative record only if that evidence is “non-cumulative, relevant, and otherwise  
8 admissible.” *See E.M. v. Pajaro Valley Unified Sch. Dist.*, 652 F.3d 999, 1005 (9th Cir.  
9 2011); *see also* 20 U.S.C. § 1415(i)(2)(C)(ii). The non-party parents’ declarations reveal  
10 nothing about whether the District upheld its IDEA obligations in A.S.’s case and are  
11 thus not relevant to L.C.’s appeal. Accordingly, the court DENIES L.C.’s motion to  
12 amend the complaint, which the court construes as a motion to amend her summary  
13 judgment motion.

#### 14 **B. Standard of Review**

15 In an appeal from a due process hearing under the IDEA, the court: “(i) shall  
16 receive the records of the administrative proceedings; (ii) shall hear additional evidence  
17 at the request of a party; and (iii) basing its decision on the preponderance of the  
18 evidence, shall grant such relief as the court determines is appropriate.”<sup>9</sup> 20 U.S.C.

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19 <sup>9</sup> As a practical matter, parties often file cross-motions for “summary judgment” on IDEA  
20 appeals. *See Capistrano Unified Sch. Dist. v. Wartenberg*, 59 F.3d 884, 891-92 (9th Cir. 1995).  
21 Although parties may caption their dispositive motions as motions for summary judgment, an  
22 IDEA suit “is in substance an appeal from an administrative determination.” *Id.* at 892.  
Accordingly, in IDEA appeals, the court does not apply the typical summary judgment standard  
and “may—indeed, in some cases must—review and decide genuine issues of material fact by a  
preponderance [of the evidence] based on evidence in the record and any additional evidence

1 § 1415(i)(2)(C). The burden of persuasion rests with the party challenging the  
2 administrative decision. *Fresno Unified*, 626 F.3d at 438. Under the standard of review  
3 described in the IDEA, “complete de novo review of the administrative proceeding is  
4 inappropriate.” *Id.* (quoting *Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d  
5 811, 817 (9th Cir. 2007)). Nonetheless, the court gives “less deference [under the IDEA]  
6 than is conventional in review of other agency actions.” *Fresno Unified*, 626 F.3d at 438  
7 (quoting *Ojai Unified Sch. Dist. v. Jackson*, 4 F.3d 1467, 1472 (9th Cir. 1993)).

8 “How much deference to give state educational agencies . . . is a matter for the  
9 discretion of the courts.” *Fresno Unified*, 626 F.3d at 438 (quoting *Gregory K. v.*  
10 *Longview Sch. Dist.*, 811 F.2d 1307, 1311 (9th Cir. 1987)) (emphasis omitted). The court  
11 gives “particular deference” to the ALJ’s administrative findings where those findings are  
12 “‘thorough and careful.’” *R.B. ex rel. F.B. v. Napa Valley Unified Sch. Dist.*, 496 F.3d  
13 932, 937 (9th Cir. 2007) (quoting *Union Sch. Dist. v. Smith*, 15 F.3d 1519, 1524 (9th Cir.  
14 1994)). An ALJ’s findings are “thorough and careful” when the ALJ “participates in the  
15 questioning of witnesses and writes a decision ‘contain[ing] a complete factual  
16 background as well as a discrete analysis supporting the ultimate conclusions.” *Napa*  
17 *Valley Unified*, 496 F.3d at 942. Whatever deference the ALJ’s findings are due, “courts  
18 should not substitute their own notions of sound educational policy for those of the  
19 school authorities which they review.” *Gregory K.*, 811 F.2d at 1311 (quoting *Wilson v.*  
20 *Marana Unified Sch. Dist.*, 735 F.2d 1178, 1183 (9th Cir. 1984)).

21 \_\_\_\_\_  
22 offered by the parties, in addition to the findings of the ALJ.” *J.S. v. Shoreline Sch. Dist.*, 220 F.  
Supp. 2d 1175, 1184 (W.D. Wash. 2002).

1 **C. L.C.’s Appeal**

2 L.C. alleges that the ALJ’s decision is deficient on numerous grounds. Her  
3 arguments fall into three categories: (1) the ALJ’s decision was the result of an unfair  
4 hearing process and should not be afforded deference; (2) the ALJ erroneously found that  
5 A.S.’s 2015 initial evaluation and 2016 math reevaluation were appropriate, such that the  
6 District was not required to provide IEEs; and (3) the ALJ erroneously found that the  
7 District did not deny A.S. a FAPE in the 2015-16 and 2016-17 school years. The court  
8 addresses L.C.’s arguments in turn.<sup>10</sup>

9 1. The Hearing Process and Deference to the ALJ’s Order

10 L.C. asserts several claims related to the ALJ’s conduct of the hearing and broadly  
11 argues that the ALJ “violated the Parent[s’] right to a fair trial.” (L.C. MSJ at 14-17.)  
12 Her arguments concern the ALJ’s refusal to rule on claims not pleaded in the due process  
13 complaint; the ALJ’s rulings on the exclusion and sequestration of certain witnesses; the  
14 weight the ALJ accorded Ms. Anthony’s testimony; and other evidentiary issues. (*See*  
15 *id.*) As discussed below, several of L.C.’s arguments regarding the hearing process relate  
16 to the degree of deference, if any, the court should afford the ALJ’s findings and  
17 conclusions.

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19  
20 <sup>10</sup> Because L.C. proceeds *pro se*, the court liberally construes her motion. *See Balistreri*  
21 *v. Pacifica Police Dept.*, 901 F.2d 696, 698-99 (9th Cir. 1990). Where L.C. has not cited  
22 relevant portions of the record or applicable authority, however, the court does not find or supply  
evidence on L.C.’s behalf. *See Indep. Towers of Wash. v. Washington*, 350 F.3d 925, 929 (9th  
Cir. 2003) (“[J]udges are not like pigs, hunting for truffles buried in briefs.”) (quoting *United*  
*States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991)).

1                   a. *Claims Not Pleaded in the Due Process Complaint*

2           L.C. asserts that the ALJ erroneously precluded the Parents from raising new  
3 issues “that were discovered during the course of the hearing.” (*Id.* at 15.) Specifically,  
4 L.C. alleges that the ALJ should have allowed the Parents to argue that the District  
5 committed “educational malpractice,” that Ms. Heras misrepresented herself as a  
6 psychologist and committed perjury, and that the District fraudulently accepted federal  
7 funds. (*Id.*; *see also* ALJ CL ¶ 67.) The ALJ declined to consider these claims because  
8 they “were not set forth in the [due process] [c]omplaint or in the issues statement and  
9 because the ALJ lack[ed] jurisdiction for many of them.” (*Id.*) In addition, L.C. asserts  
10 that the District failed to uphold its “child find” obligation under the IDEA, which  
11 requires school districts to “identif[y], locat[e], and evaluat[e]” all students with  
12 disabilities, while A.S. was in kindergarten and first grade. *See* 20 U.S.C.  
13 § 1412(a)(3)(A); (L.C. MSJ at 25-26). The ALJ admitted evidence concerning A.S.’s  
14 performance in kindergarten and first grade for the limited purpose of contextualizing the  
15 claims the Parents pleaded in the due process complaint and did not rule on any claims  
16 that arose before A.S.’s second-grade year. (*See, e.g.*, Tr. 45:4-24, 55:15-56:18,  
17 284:19-285:5, 305:18-306:10.) According to L.C., by refusing to consider these issues,  
18 the ALJ contravened the Ninth Circuit’s decision in *M.C. v. Antelope Valley Union High*  
19 *School District*, 858 F.3d 1189 (9th Cir. 2017).

20           The ALJ properly declined to entertain claims not pleaded in the Parents’ due  
21 process complaint. Administrative and judicial review in IDEA cases is specifically  
22 limited to the issues raised in the due process complaint, unless the parties agree

1 otherwise. *See* 20 U.S.C. § 1415(f)(3)(B); *see also* *Cty. of San Diego v. Cal. Special*  
2 *Educ. Hearing Office*, 93 F.3d 1458, 1465 (9th Cir. 1996). L.C. did not allege in the due  
3 process complaint that the District committed “educational malpractice,” that Ms. Heras  
4 misrepresented her credentials, or that the District committed fraud (*see generally* AR at  
5 2901-03); she raised these claims for the first time in the Parents’ post-hearing brief (*id.*  
6 at 2730-34, 2783, 2786). Additionally, L.C. cites no evidence that the parties agreed to  
7 expand the scope of the due process hearing to address these additional claims. (*See*  
8 *generally* L.C. MSJ.)

9         Likewise, even if the due process complaint could be construed to allege that the  
10 District failed to uphold its child-find obligation before A.S.’s second-grade year, L.C.  
11 waived her right to bring that claim as part of the due process hearing. The ALJ’s initial  
12 statement of the issues for the hearing included only allegations relating to the 2015-16  
13 and 2016-17 school years. (*See id.* at 2564-66.) Subsequently, the ALJ granted L.C.  
14 leave to amend the Parents’ due process complaint. (*See id.* at 2499-503, 2531-37.) In  
15 the amended due process complaint, the Parents articulated additional issues for the  
16 hearing but did not assert that the District had failed to uphold its child-find duty before  
17 the 2015-16 school year. (*See id.*) L.C. cannot now argue, for the first time, that the  
18 District failed to comply with the IDEA while A.S. was in kindergarten and first grade.  
19 *See* 20 U.S.C. § 1415(f)(3)(B).

20         Finally, L.C.’s reliance on *Antelope Valley*, 858 F.3d 1189, is misplaced. In that  
21 case, the Ninth Circuit reversed the district court’s determination that the parents waived  
22 their right to raise a claim that the ALJ had omitted from the pre-hearing restatement of

1 the issues, even though the parents had pleaded the claim in their complaint. *Id.* at 1196.  
2 In so holding, the Ninth Circuit emphasized that, just as in judicial proceedings, an  
3 administrative tribunal must “treat issues as if they were raised in the complaint if they  
4 are tried by consent.” *Id.* Both sides in *Antelope Valley* “presented extensive evidence,”  
5 including witness testimony, regarding the omitted claim. *Id.* Here, in contrast, L.C.  
6 fails to show that any of the claims allegedly overlooked by the ALJ were tried by  
7 consent. (*See generally* L.C. MSJ.) Indeed, the District consistently objected that  
8 evidence about A.S.’s kindergarten and first-grade years was outside the scope of the  
9 hearing, and the ALJ acknowledged as much. (*See, e.g.*, Tr. 45:4-24, 55:15-56:18,  
10 284:19-285:5, 305:18-306:10.) The court thus finds that the ALJ properly declined to  
11 rule upon the Parents’ claims regarding “educational malpractice,” perjury and  
12 misrepresentation, fraud, and the District’s alleged violation of the child-find obligation.

13 *b. Witness Exclusion and Sequestration*

14 L.C. disputes the ALJ’s rulings on two witness-related issues. First, she argues  
15 that the ALJ erroneously precluded the Parents from calling Mr. Thiele, the District  
16 Superintendent, “thereby dismissing the Parents’ right to present evidence and  
17 argument.” (L.C. MSJ at 16.) L.C. alleges that Mr. Thiele “would have shown the  
18 willful policy of negligence [the District] had in refusing to test for and teach dyslexic  
19 children.” (*Id.* at 16-17.) Second, L.C. contends that the ALJ erroneously failed to  
20 sequester Ms. Madsen, the District’s Director of Special Services. (*Id.* at 17.)

21 Before the hearing, the District moved to exclude Mr. Thiele on the ground that  
22 Mr. Thiele lacked personal knowledge of A.S.’s academic performance and did not

1 participate in A.S.'s evaluation or IEP team meetings. (AR at 2413-14.) The Parents  
2 opposed the District's motion, arguing that, as Superintendent, Mr. Thiele was  
3 responsible for the District's alleged failure to provide A.S. a FAPE. (*Id.* at 2406-07.)  
4 After a telephonic hearing, the ALJ granted the District's motion to exclude Mr. Thiele.  
5 (*Id.* at 2400.) The court lacks a transcript of the telephonic hearing, and, in the pretrial  
6 order memorializing the hearing, the ALJ did not explain why she granted the District's  
7 motion. (*See id.* at 2400-02.) Nonetheless, the record sheds some light on the ALJ's  
8 reasoning. During the hearing, in response to L.C.'s request that the ALJ clarify her  
9 decision to exclude Mr. Thiele, the ALJ stated that she so ruled "based on what [she]  
10 heard" from the parties during the pretrial hearing. (Tr. 274:11-19.) The ALJ further  
11 explained that she would "reconsider" her ruling only if the Parents could provide  
12 testimony that Mr. Thiele "had somehow been involved in the selection of assessments"  
13 for the District. (*Id.*) The District asserts, and L.C. does not dispute, that the Parents  
14 declined to move for reconsideration of the ALJ's decision to exclude Mr. Thiele during  
15 the remainder of the hearing. (Dist. MSJ at 20; *see generally* L.C. MSJ; *see generally*  
16 L.C. Reply (Dkt. # 45).)

17       Because the District's motion to exclude Mr. Thiele appears to have been resolved  
18 by way of an oral ruling at a telephonic conference for which the court lacks a transcript,  
19 the court cannot evaluate the reasoning underlying the ALJ's decision. The court thus  
20 extends no deference to the ALJ's ruling on this point. Nonetheless, the court finds that,  
21 in light of the parties' submissions on the District's motion, the ALJ properly excluded  
22 Mr. Thiele. In opposing the District's motion, the Parents did not contest that Mr. Thiele



1 had no personal knowledge of A.S.'s disability, academic performance, evaluations, or  
2 IEPs. (*See* AR at 2406-07.) Nor did the Parents allege that Mr. Thiele's testimony would  
3 shed light on the District's alleged "negligence" with respect to students with dyslexia.  
4 (*Id.*) Moreover, the ALJ allowed the Parents to introduce L.C.'s email exchanges with  
5 Mr. Thiele. (*Id.* at 2400, 4277-315.) In those emails, Mr. Thiele repeatedly informed  
6 L.C. that "the appropriate place to address [her] concerns regarding [her] daughter's IEP  
7 [wa]s through the IEP team . . . and [the District's] Special Services Department." (*Id.* at  
8 4287, 4288.) In other words, the Parents' own evidence tends to show that Mr. Thiele  
9 lacked personal knowledge of, and was not involved with, the District's assessment of  
10 A.S. or A.S.'s IEP. (*See generally id.* at 4277-315.) The ALJ thus properly granted to  
11 District's motion to exclude Mr. Thiele.

12 L.C. also argues that the ALJ erred in allowing Ms. Madsen to observe other  
13 witnesses' testimony before she took the stand. (L.C. MSJ at 17.) L.C. asserts that,  
14 because Ms. Madsen was not sequestered before her testimony, Ms. Madsen "knew what  
15 evidence [L.C.] was talking about and knew [L.C.'s] direct examination strategy." (*Id.*)  
16 Thus, according to L.C., she was precluded from obtaining "true and new testimony"  
17 from Ms. Madsen. (*Id.*) L.C.'s objections are unfounded. The ALJ properly ruled that  
18 Ms. Madsen was a party representative who was entitled to be present for other  
19 testimony. (*See* Tr. 503:18-505:10.) In any case, L.C. fails to show that the Parents  
20 suffered any prejudice as a result of the ALJ's refusal to sequester Ms. Madsen. (*See*  
21 *generally* L.C. MSJ.)

22 //

1                    *c. The Parents' Expert*

2                    L.C. argues at length that the ALJ erroneously discounted the testimony of Ms.  
3 Anthony, the Parents' expert witness. (*See* L.C. MSJ at 22-25; *see also id.* at 17, 39.)  
4 The ALJ's decision summarized in detail the opinions Ms. Anthony provided at the  
5 hearing, including her view that the District denied A.S. a FAPE in the 2015-16 and  
6 2016-17 school years. (*See* ALJ FF ¶¶ 83-89.) However, the ALJ concluded that,  
7 "[b]ecause Ms. Anthony does not have education, training, and experience in special  
8 education, has little experience writing IEP goals, has not met the Student or talked to her  
9 teachers, and has only reviewed samples of the Student's work provided by the Parents  
10 without an understanding of what the samples represented, her opinion is given little  
11 weight." (*Id.* FF ¶ 83.)

12                    Courts have repeatedly recognized that an ALJ appropriately discounts an expert's  
13 testimony where the expert has not directly observed the student in an educational setting.  
14 *See, e.g., N.B. v. Hellgate Elementary Sch. Dist.*, 541 F.3d 1202, 1212 (9th Cir. 2008)  
15 (concluding that the ALJ reasonably discounted the testimony of the parents' experts  
16 because those experts "based their opinions predominantly upon file reviews," in contrast  
17 to teachers who "had observed [the student's] school performance"); *J.W. ex rel. J.E.W.*  
18 *v. Fresno Unified Sch. Dist.*, 611 F. Supp. 2d 1097, 1114 (E.D. Cal. 2009) (finding that  
19 the ALJ properly placed greater weight on teacher testimony than on that of an expert  
20 who "never met with [the student] or [d]istrict teachers and staff who worked with [the  
21 student]," "never observed [the student's] physical environment or his behavior," and  
22 based her opinion "solely on her review of the written IEPs, progress reports, and

1 examination results”); *B.V. v. Dep’t of Educ., State of Haw.*, 451 F. Supp. 2d 1113,  
2 1125-26 n.18 (D. Haw. 2005) (giving “little weight” to an expert conclusion because the  
3 expert “appear[ed] to have gotten his information about the appropriateness of [the  
4 student’s] IEP from [the student’s parent],” instead of “an independent review of [the  
5 student’s] educational progress”).

6         The court agrees that Ms. Anthony’s opinions of A.S.’s education-related needs  
7 and progress suffered numerous deficiencies. As the ALJ emphasized, Ms. Anthony did  
8 not meet A.S., much less observe her in an educational setting. (*See* ALJ FF ¶ 83; Tr.  
9 1571:9-10, 1582:6-16.) Nor did Ms. Anthony speak with any of A.S.’s teachers. (Tr.  
10 1571:9-10.) Instead, Ms. Anthony based her opinions on conversations with L.C.,  
11 samples of A.S.’s written work selected by the Parents, A.S.’s IEPs and test scores, Ms.  
12 Gorsuch’s evaluation, and her own review of research on dyslexia. (*Id.* 1547:12-24,  
13 1571:1-8, 1574:7-9, 1581:6-25, 1590:4-6.) Ms. Anthony acknowledged that, with respect  
14 to the writing samples the Parents provided her, she was not aware of the “instructions”  
15 or “expectations” that accompanied the assignments. (*Id.* 1588:14-1590:16.)  
16 Additionally, Ms. Anthony conceded that she was not familiar with the curriculum that  
17 applied to the math work product the Parents provided her. (*Id.* 1588:2-8.) Finally, Ms.  
18 Anthony testified that she does not hold a special education endorsement and, despite  
19 having “reviewed many IEPs . . . over the years,” she began writing IEPs only in the  
20 2016-17 school year. (*Id.* 1548:18-22, 1569:7-13.) In light of these deficiencies, the ALJ  
21 appropriately gave little weight to Ms. Anthony’s opinions. *See, e.g., Hellgate*  
22 *Elementary*, 541 F.3d at 1212.

1                   *d. The Parents' Other Evidence*

2           L.C. summarily argues that the ALJ “rejected all testimony and exhibits from [the]  
3 Parents that supported the Parent[s’] issues.” (L.C. MSJ at 14.) That objection is  
4 unfounded. Throughout the proceedings, the ALJ afforded L.C. substantial latitude to  
5 examine witnesses and introduce evidence, often over the District’s objections. (*See*,  
6 *e.g.*, Tr. 119:15-131:10, 340:15-343:22.) For example, the ALJ permitted L.C. to prompt  
7 A.S. to read from the witness stand, even as the ALJ expressed doubts that the exercise  
8 would be “helpful” to her disposition of the issues. (*Id.* 128:18-22, 130:22-131:9.)  
9 Likewise, the ALJ admitted the vast majority of the exhibits the Parents sought to  
10 introduce (*see* ALJ Order at 2), including samples of A.S.’s work that lacked context and  
11 were not produced at school (*see, e.g.*, Tr. 122:12-123:11). Where relevant to her  
12 findings and conclusions, the ALJ cited or discussed the Parents’ evidence. (*See, e.g.*,  
13 ALJ FF ¶¶ 16, 20 (citing the Parents’ evidence regarding standardized assessments); *id.*  
14 FF ¶ 45 (explaining weight given to J.S.’s testimony regarding 2015 IEP); *id.* FF  
15 ¶¶ 72-73 (discussing the Parents’ evidence regarding the concerns they identified before  
16 the October 2016 IEP meeting); *id.* FF ¶ 82 (summarizing the Parents’ concerns about  
17 A.S.’s alleged lack of progress); *id.* FF ¶¶ 83-89 (extensively summarizing the testimony  
18 of Ms. Anthony).)

19                   *e. Miscellaneous Objections*

20           L.C. raises several other broad objections to the ALJ’s conduct of the hearing. In  
21 particular, she argues that the ALJ only cited J.S.’s testimony “when it favored the  
22 [District],” erroneously found that some of the Parents’ assertions during the hearing

1 relied on speculation, and refused to allow L.C. to ask questions “out of the scope” of the  
2 hearing. (L.C. MSJ at 14-16.) The court has considered these arguments and finds them  
3 meritless.

4 *f. Deference to the ALJ’s Order*

5 As the discussion above suggests, the ALJ carefully presided over the due process  
6 hearing and produced a thorough, well-reasoned order. (*See generally* ALJ Order.)  
7 During the hearing, the ALJ actively questioned witnesses, including educators who work  
8 for the District. (*See, e.g.*, Tr. 1387:17-1390:1 (questioning Ms. Heras); *id.*  
9 1874:23-1881:15 (questioning Ms. Schoot).) In addition, the ALJ exhaustively outlined  
10 the issues for the hearing. (ALJ Order at 2-6.) The ALJ supported her 89 findings of fact  
11 and 67 conclusions of law by citing extensively to the record and applicable law. (*See id.*  
12 at 6-38). Whenever the ALJ weighed evidence, she cogently explained her reasons for  
13 doing so. (*See, e.g., id.* FF ¶ 83 (explaining why the ALJ gave Ms. Anthony’s opinions  
14 “little weight”).) In short, the ALJ’s findings and conclusions “evinced . . . her careful,  
15 impartial consideration of all the evidence and demonstrates . . . her sensitivity to the  
16 complexity of the issues presented.” *Fresno Unified*, 626 F.3d at 438 (internal quotation  
17 marks and citation omitted). The court thus finds that the ALJ’s decision is entitled to the  
18 “particular deference” afforded “thorough and careful findings.” *See Napa Valley*  
19 *Unified*, 496 F.3d at 942 (internal quotation marks omitted). At the same time, the court  
20 notes that it would reach the conclusions that follow even if the ALJ’s order were not  
21 entitled to particular deference.

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1           2. Appropriateness of the District’s 2015 and 2016 Evaluations

2           The ALJ concluded that the District proved that it appropriately evaluated A.S. in  
3 the 2015 initial evaluation and the 2016 math evaluation and thus was not obligated to  
4 fund an IEE. (ALJ CL ¶¶ 21-23, 29.) L.C. argues that the ALJ’s conclusions are not  
5 supported by the record and that the District failed to appropriately evaluate A.S. in both  
6 2015 and 2016. (L.C. MSJ at 21, 25-29, 31-32, 35-38, 41-43.)

7           *a. Framework Governing Evaluations and Reevaluations*

8           Before providing special education and related services to a child with a disability,  
9 a school district must “conduct a full and individual initial evaluation.” 20 U.S.C.  
10 § 1414(a)(1)(A). In so doing, the school district must comply with various procedural  
11 requirements. *Id.* § 1414(a)(1)(C); *see also* 34 C.F.R. §§ 300.304, .311; WAC  
12 392-172A-03020. Among other things, the district must “use a variety of assessment  
13 tools and strategies to gather relevant functional, developmental, and academic  
14 information about the child, including information provided by the parent,” to determine  
15 whether the child is eligible for special education and the content of the child’s IEP. 34  
16 C.F.R. § 300.304(b)(1); WAC 392-172A-03020(2). Those assessments must be  
17 “administered by trained and knowledgeable personnel” in accordance with standard  
18 assessment instructions. 34 C.F.R. §§ 300.304(c)(1)(iv), (v); WAC  
19 392-172A-03020(3)(a)(iv), (v). Substantively, the school district’s evaluation must  
20 encompass “all areas related to the suspected disability” and be “sufficiently  
21 comprehensive to identify all of the student’s special education and related services

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1 needs.” 34 C.F.R. §§ 300.304(c)(4), (c)(6); WAC 392-172A-03020(3)(e). Reevaluations  
2 follow the same procedures. *See* 34 C.F.R. § 300.303(a).

3 *b. 2015 Initial Evaluation*

4 L.C. alleges that A.S.’s 2015 initial evaluation was deficient on multiple  
5 grounds.<sup>11</sup> First, she argues that the District “forced [the] Parents to get their own  
6 evaluation [of A.S.] before they would offer her special education services.” (L.C. MSJ  
7 at 26.) Second, L.C. asserts that the District “rejected” Ms. Gorsuch’s evaluation but did  
8 not inform the Parents of that rejection until the due process hearing. (*Id.* at 27.) Third,  
9 L.C. contends that District staff were not qualified to administer standardized  
10 assessments to A.S. or erroneously administered those assessments. (*Id.* at 10, 14-15.)  
11 Finally, L.C. argues that the District failed to appropriately assess A.S. “around her  
12 disability of dyslexia.” (*Id.* at 28-29.)

13 L.C.’s first contention—that the District “forced” the Parents to obtain an outside  
14 evaluation of A.S. before evaluating her for special education services—is at odds with  
15 the record. After A.S. finished first grade, L.C. contacted Ms. Lederman and requested  
16 that the District evaluate A.S. for special education services. Ms. Lederman informed  
17 L.C. that the school’s guidance team would meet in September to discuss L.C.’s request  
18 and asked that L.C. provide any outside information she wanted the team to consider.  
19 (AR at 2916.) In no way did Ms. Lederman predicate the District’s consideration of

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20 <sup>11</sup> L.C. also argues that the District failed to evaluate whether A.S. was eligible for  
21 special education services in the 2014-15 school year, when A.S. was in first grade. (L.C. MSJ  
22 at 25-26.) As discussed above, L.C. did not allege in the due process complaint that the District  
violated the IDEA before A.S.’s second-grade year. *See supra* § III.C.1.a. Accordingly, the  
court declines to address that claim.

1 L.C.’s request for a special education evaluation upon the Parents’ procurement of an  
2 outside opinion. (*See id.*)

3 L.C.’s second argument—that, unbeknownst to the Parents, the District “rejected”  
4 Ms. Gorsuch’s private evaluation but failed to so inform the Parents until the due process  
5 hearing—is similarly unfounded. (*See* L.C. MSJ at 27.) L.C. focuses on a moment at the  
6 hearing when counsel for the District expressed disagreement with L.C.’s representation  
7 to the ALJ that A.S. “ha[d] a diagnosis of dyslexia.” (*Id.*; *see also* Tr. 192:13-17.) L.C.  
8 appears to argue that counsel’s statement was the first time she learned that the District  
9 disagreed with A.S.’s “disability diagnosis,” and, therefore, the Parents “were denied  
10 meaningful participation” in A.S.’s evaluation and the IEP process generally. (L.C. MSJ  
11 at 27.) The court is unpersuaded. As an initial matter, L.C. fails to recognize that Ms.  
12 Gorsuch never formally diagnosed A.S. with dyslexia.<sup>12</sup> Moreover, as discussed more  
13 fully below, the District concluded that A.S. was eligible for special education services  
14 through the category of “Specific Learning Disability,” not dyslexia. (*See* AR at 2962.)  
15 Whether or not the District disagreed with the proposition that A.S. had been formally  
16 diagnosed with dyslexia is therefore peripheral to the issues before the court.

17 In any event, the District reviewed and summarized Ms. Gorsuch’s conclusions as  
18 part of its initial evaluation of A.S. In its 2015 evaluation report, the District noted that  
19 Ms. Gorsuch observed in A.S. “average overall cognitive functioning, with well-below  
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21 <sup>12</sup> The District also argues that Ms. Gorsuch, as a school psychologist, was not qualified  
22 to diagnose A.S. (Dist. MSJ at 3; *see also* AR at 3635.) The Parents’ own expert, Ms. Anthony,  
conceded that school psychologists are not qualified to render formal diagnoses in Washington  
State. (Tr. 1570:5-10.)



1 average phonological processing skills as measured by the [Woodcock-Johnson IV].”  
2 (*Id.* at 2961.) Additionally, in the section of the evaluation report titled  
3 “Medical-Physical Findings,” the District stated that, “as reported by [Ms.] Gorsuch, . . .  
4 in her private evaluation, “[A.S.] demonstrated a pattern of academic and cognitive  
5 strengths and weaknesses consistent with th[e] . . . specific learning disability of  
6 dyslexia.” (*Id.* at 2965.) The report also noted Ms. Gorsuch’s characterization of  
7 dyslexia as “a language-based learning disability” with a “cluster of symptoms,”  
8 including difficulties with spelling, reading, and pronunciation. (*Id.*) In other words, far  
9 from refusing to consider Ms. Gorsuch’s assessment, the District integrated Ms.  
10 Gorsuch’s conclusions into its initial evaluation of A.S.<sup>13</sup>

11 L.C. also argues that District staff were either not qualified to administer  
12 standardized assessments to A.S. or erroneously administered those assessments. (*See*  
13 L.C. MSJ at 10, 14-15.) L.C. first insists that Ms. Heras “was not qualified to deliver,  
14 interpret, or even view” the BASC-2 test, “according to test protocols.” (*Id.* at 10.) Ms.  
15 Heras credibly testified that she was appropriately trained to administer the BASC-2, and  
16 L.C. cites no authority to the contrary. (*See* Tr. 1322:23-1323:12.) In addition, L.C.  
17 contends that the BASC-2 was deficient because it relied, in part, on input provided by  
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19 <sup>13</sup> The court likewise rejects L.C.’s contention that Ms. Heras, the school psychologist  
20 who administered several of the standardized assessments during the District’s 2015 initial  
21 evaluation of A.S., “refused to honor [Ms. Gorsuch’s] evaluation and ignored the evaluation  
22 recommendations and diagnosis.” (*See* L.C. MSJ at 11.) Ms. Heras testified that she  
“incorporated [Ms. Gorsuch’s] results as well as her recommendations in [the initial]  
evaluation.” (Tr. 1311:11-12.) The evaluation report supports Ms. Heras’s testimony. (*See* AR  
at 2961, 2965.)

1 Ms. Clark, who at that point had taught A.S. for only 13 days. (L.C. MSJ at 31.) Yet, the  
2 evaluation team accounted for that variable. (AR at 2971 (stating that “the Teacher  
3 Rating Scale . . . should be interpreted with caution.”).) L.C. also argues that Ms.  
4 Anthony’s testimony showed that Ms. Shultz erroneously administered the CELF-5 to  
5 A.S. (L.C. MSJ at 4.) However, Ms. Anthony merely stated that that it “would be  
6 helpful” for an educator administering the CELF test to know whether the student has  
7 dyslexia. (AR at 2662.) Moreover, as the ALJ emphasized, Ms. Anthony admitted that,  
8 unlike Ms. Shultz, she is not a speech language pathologist and has never administered  
9 the CELF. (Tr. 1569:18-21, 1590:20-1591:3.) The ALJ thus properly discounted Ms.  
10 Anthony’s criticisms of the District’s administration of the CELF-5.

11 Finally, L.C. asserts that the District’s initial evaluation of A.S. was deficient  
12 because the District did not specifically assess A.S. for dyslexia. (L.C. MSJ at 28-29,  
13 35-37.) The ALJ properly rejected that argument. Under the IDEA, a student is eligible  
14 for special education and related services if that student is found to have a disability  
15 falling within one of several specific disability categories. *See* 34 C.F.R. § 300.8(a)(1);  
16 WAC 392-172A-01035(1)(a). “Dyslexia” is not a qualifying disability category. *See id.*  
17 Rather, dyslexia is but one example of various disabilities falling within the eligibility  
18 category of Specific Learning Disability. 34 C.F.R. § 300.8(c)(10)(i); WAC  
19 392-172A-01035(1)(k)(i). As the ALJ recognized, the District appropriately tested A.S.  
20 “to determine if she had a specific learning disability in reading, writing, and/or math, be  
21 it dyslexia or some other type of [Specific Learning Disability].” (ALJ CL ¶ 12.)  
22 Relatedly, the IDEA does not give a parent the right to dictate specific areas in which a

1 school district must assess a student as part of a special education evaluation. *See Avila*  
2 *v. Spokane Sch. Dist.* 81, 686 F. App'x 384, 385 (9th Cir. 2017) (holding that the school  
3 district properly assessed a student for a Specific Learning Disability and rejecting the  
4 parents' contention that the district was obligated to administer subtests designed to  
5 assess dyslexia and dysgraphia).

6 The court agrees with the ALJ's conclusion that the District appropriately assessed  
7 A.S. "in all areas related to [her] suspected disability" during the 2015 initial evaluation.  
8 *See* 34 C.F.R. § 300.304(c)(4); WAC 392-172A-03020(3)(e); (*see also* ALJ CL ¶ 12.)  
9 Qualified District personnel reviewed existing data on A.S., obtained input from the  
10 Parents, considered Ms. Gorsuch's private evaluation, conducted classroom observation,  
11 administered a battery of standardized assessments, and evaluated A.S. in writing, math,  
12 communication, and social-emotional functioning. (*See* AR at 2960-88.) Moreover, the  
13 District produced a detailed and comprehensive "evaluation report . . . sufficient in scope  
14 to develop an IEP." (*See id.*); *see also* 34 C.F.R. § 300.304(b)(1); WAC  
15 392-172A-03020(2). The ALJ properly found that the District was not obligated to fund  
16 an IEE with respect to the 2015 initial evaluation.<sup>14</sup>

17 *c. 2016 Reevaluation*

18 With respect to the District's 2016 math reevaluation, L.C. argues that the IEP  
19 team failed to sign the reevaluation report, thereby rendering the entire evaluation

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21 <sup>14</sup> L.C. also argues that the District's evaluation was inadequate because the District  
22 "skew[ed]" the tests, never gave A.S. "an IQ test," and "ignored" the Parents' questions about  
the evaluation. (L.C. MSJ at 10, 11, 38.) The court has considered these claims and finds them  
meritless.

1 inappropriate. (L.C. MSJ at 29; *see also id.* at 25.) The ALJ found that A.S.’s math  
2 reevaluation report “was not fully compliant because it was not signed and dated by each  
3 professional member” of the reevaluation team, as required by an applicable regulation.  
4 (ALJ CL ¶ 29); *see also* WAC 392-172A-03035(1) (providing that each professional  
5 involved in a student’s evaluation or reevaluation must sign and date the evaluation  
6 report to certify that report “represents his or her conclusion”). The ALJ further  
7 concluded that “[t]his minor procedural violation does not render the evaluation  
8 inappropriate for purposes of the Parents’ request for an IEE.” (ALJ CL ¶ 29.)

9 At the due process hearing, the District introduced an unsigned version of the math  
10 reevaluation report.<sup>15</sup> (*See* AR at 3123.) Yet, as the District points out, the Parents  
11 introduced a different version of the math reevaluation report, which shows that each  
12 professional member of the evaluation team signed and dated the report on November 29,  
13 2016, the date the team discussed the results of the reevaluation. (AR at 3631; *see also*  
14 Dist. MSJ at 21 n.17.) The ALJ thus erred in concluding that the math reevaluation  
15 report was procedurally deficient for lack of signatures. (*See* ALJ CL ¶ 29.) However,  
16 this error was harmless, because, even assuming the evaluation team had failed to sign  
17 the math reevaluation report, the ALJ rightly concluded that the Parents could not show  
18 that such a minor procedural deficiency deprived A.S. of educational benefits or impeded

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21 <sup>15</sup> The unsigned version of the report that the District introduced was part of a “Notice of  
22 Meeting” that the District sent to the Parents to alert them of the November 29, 2016, meeting  
the District had scheduled to discuss the math reevaluation. (*See* AR at 3116-25.)

1 the Parents' rights to participate in the decision-making process. *See* 20 U.S.C. §  
2 1415(f)(3)(E)(ii); WAC 392-172A-05105(2).

3 L.C. also argues that the ALJ erroneously "declined to rule" on whether A.S. was  
4 entitled to a "Language IEE." (L.C. MSJ at 42.) Presumably, L.C. refers to the District's  
5 decision, made at the October 27, 2016, IEP meeting, not to reevaluate A.S. in  
6 "communication."<sup>16</sup> Contrary to L.C.'s representations, the ALJ in fact considered the  
7 Parents' argument that the District wrongly determined that it did not need to reevaluate  
8 A.S. in communication to provide her a FAPE. (ALJ CL ¶ 26.)

9 The ALJ correctly determined that the District was not obligated to reevaluate  
10 A.S. in communication in 2016. A school district must reevaluate a student if the district  
11 determines that the student's performance warrants a reevaluation or upon the request of  
12 the student's parent or teacher. 34 C.F.R. § 300.303(a). However, a district need not  
13 reevaluate a student in every area in which a parent requests reevaluation. Rather, the  
14 district must review "existing evaluation data" on the student and, on the basis of that  
15 review and input from the parents, "identify what additional data, if any," are needed to  
16 ensure the child receives a FAPE. WAC 392-172A-03025(2). The District did just that.

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18 <sup>16</sup> L.C. appears to make a distinction between a "language" evaluation and a  
19 "communication" evaluation, arguing that "an evaluation in language encompasses much more  
20 than intelligible oral speech alone or 'communication.'" (L.C. MSJ at 42.) That distinction is  
21 not supported by the record, and L.C. fails to provide authority to the contrary. Indeed, when the  
22 District assessed A.S.'s communication skills during the 2015 initial evaluation, the District  
examined A.S.'s "expressive and receptive language skills," her "ability to understand language  
and use language," and her "articulation skills." (AR at 2982.) Similarly, when determining  
whether it was appropriate to reassess A.S. in communication in 2016, the District accounted for  
A.S.'s "language skills." (*Id.* at 3103.) The court therefore assumes that, when L.C. refers to a  
"Language IEE," she is referring to the Parents' request, in 2016, that the District reassess A.S.  
in communication. (*Id.* at 3102.)

1 At the October 27, 2016, IEP meeting, A.S.'s IEP team discussed with the Parents their  
2 request that the District reevaluate A.S. in communication. (AR at 3102-03.) A District  
3 speech language pathologist examined the communication component of A.S.'s 2015  
4 initial evaluation, explained that the testing "was strong and valid," and opined that  
5 "[t]here [was] no reason to believe that [A.S.'s] scores would drop significantly enough  
6 to qualify her for speech/language services." (*Id.* at 3103, 3108.) The District reasonably  
7 concluded that, at that time, it needed no further data on A.S.'s communication skills to  
8 ensure that A.S. received a FAPE. *See* WAC 392-172A-03025(2).

9 In sum, the court finds that the ALJ correctly concluded that both A.S.'s 2015  
10 initial evaluation and her 2016 math reevaluation were appropriate under the IDEA. The  
11 ALJ also correctly concluded that the District was not obligated to reevaluate A.S. in  
12 communication in 2016. Accordingly, L.C. is not entitled to an IEE at District expense.

13 3. Whether the District Denied A.S. a FAPE by Failing to Develop or Implement  
14 Appropriate IEPs

15 L.C. argues at length that the District denied A.S. a FAPE by failing to develop  
16 and implement appropriate IEPs in the 2015-16 and 2016-17 school years. (*See generally*  
17 L.C. MSJ.) Her arguments fall into four categories: (1) the District's alleged procedural  
18 violations of the IDEA; (2) the alleged substantive shortcomings of A.S.'s IEPs; (3) the  
19 District's alleged failure to implement A.S.'s IEPs; and (4) A.S.'s alleged lack of  
20 educational progress.

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1                   a. *Alleged Procedural Violations*

2                   i. Parental Participation

3                   “An IEP which addresses the unique needs of the child cannot be developed if  
4 those people who are most familiar with the child’s needs are not involved or fully  
5 informed.” *Amanda J. ex rel. Annette J. v. Clark Cty. Sch. Dist.*, 267 F.3d 877, 892 (9th  
6 Cir. 2001). To that end, the IDEA requires that the IEP team include a parent, 20 U.S.C.  
7 § 1414(d)(1)(B)(i), and mandates that the IEP consider the concerns of the parent  
8 throughout the IEP process, 20 U.S.C. §§ 1414(c)(1)(B), (d)(4)(A)(ii)(III). Thus, “[a]  
9 school district violates IDEA procedures if it independently develops an IEP, without  
10 meaningful parental participation, and then simply presents the IEP to the parent for  
11 ratification.” *Ms. S. ex rel. G. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1131 (9th Cir.  
12 2003), *superseded by statute on other grounds*, 20 U.S.C. § 1414(d)(1)(B). However, a  
13 district does not necessarily violate the IDEA if it refuses to implement a parent’s  
14 requests, and a parent does not have “veto” power over IEP provisions. *See Vashon*  
15 *Island*, 337 F.3d at 1131.

16                   L.C. asserts that the ALJ erred in concluding that the District afforded the Parents  
17 meaningful participation in the formulation of A.S.’s IEPs. (L.C. MSJ at 15, 29-30; *see*  
18 *also* ALJ Order CL ¶¶ 37-40, 58.) Specifically, L.C. argues that, although the Parents  
19 were present at the IEP meetings, the District allowed the Parents only nominal  
20 participation in the IEP process and “ignored” the Parents’ questions and requests. (L.C.  
21 MSJ at 29-30.) Her arguments lack merit.

22 //

1 First, the record demonstrates that the Parents actively participated in all but one  
2 of A.S.'s evaluation-related and IEP team meetings. Both Parents attended the October  
3 15, 2015, meeting at which District staff reviewed the results of A.S.'s initial evaluation.  
4 (AR at 2993.) A few weeks later, on November 5, 2015, J.S. attended an IEP meeting  
5 with A.S.'s IEP team, with which he reviewed A.S.'s draft IEP. (*Id.* at 3008; *see also* Tr.  
6 1845:4-11.) L.C. was ill and unable to attend, but the Parents did not request that the  
7 District reschedule the meeting. (Tr. 1631:13-1632:11; *see also id.* 1844:6-15.) During  
8 the 2015-16 school year, the District agreed to hold two additional meetings with A.S.'s  
9 IEP team—in February 2016 and August 2016—so that the Parents could express their  
10 concerns about A.S.'s progress under her IEP. (AR at 3044-51, 3068-79.) At both  
11 meetings, the IEP team thoroughly discussed and documented the Parents' questions and  
12 IEP-related requests. (*Id.* at 3049-51 (PWN memorializing February 2016 meeting); *id.*  
13 at 3068-79 (District notes from August 2016 meeting); *id.* at 3327-41 (L.C.'s proposed  
14 amendments to the District's notes).) Further, both Parents attended and actively  
15 participated in the October 27, 2016, IEP team meeting, where the IEP team agreed to the  
16 Parents' proposal to reevaluate A.S. in math and thoroughly discussed several other of  
17 the Parents' IEP-related requests. (*Id.* at 3102-03 (PWN memorializing October 2016  
18 meeting); *id.* at 3104-11 (District notes from October 2016 meeting); *id.* at 3299-306  
19 (L.C.'s proposed amendments to the District's notes).) Finally, in November 2016,  
20 although the District repeatedly invited the Parents to discuss A.S.'s math reevaluation,  
21 the Parents declined; by that point, the Parents had already filed a request for a due  
22 process hearing. (*See id.* at 2904, 3116-17.)



1 L.C. fails to show that either of the Parents was denied meaningful participation in  
2 any meeting with A.S.'s IEP team. (*See generally* L.C. MSJ.) To the contrary, the  
3 record shows that the District considered the Parents' input and concerns, and, in some  
4 cases, adjusted their efforts to implement A.S.'s IEP accordingly. For example, in  
5 October 2015, the District agreed to the Parents' request that A.S. be given an assistive  
6 technology evaluation. (AR at 2994.) Moreover, during the February 2016 meeting, the  
7 IEP team, in response to the Parents' concerns, agreed that A.S. would be given a  
8 BrightLines notebook to use at home, that A.S. would not participate in state or District  
9 standardized testing, that Ms. Clark would encourage A.S. to use Co:Writer in the general  
10 education classroom, that A.S. would not be provided crosswords or word puzzles, and  
11 that A.S. would not work with parent volunteers in the general education classroom. (*Id.*  
12 at 3051.) Whenever the IEP team declined to implement the Parents' requests, the IEP  
13 team gave reasonable reasons for doing so and communicated those reasons to the  
14 Parents. (*See, e.g., id.* at 3049-50, 3102-03.) In short, the record fully supports the ALJ's  
15 conclusion that the District allowed the Parents to meaningfully participate in the IEP  
16 process.

17 Additionally, L.C. contends that the District took "prejudicial" notes during the  
18 IEP meetings and refused to accept L.C.'s "amended notes." (L.C. MSJ at 34-35.)  
19 According to L.C., the District's alleged refusal to properly document the IEP meetings  
20 rendered each meeting noncompliant with IDEA requirements, such that A.S. "has never  
21 been given a legal IEP." (*Id.* at 35.) These claims lack merit. To begin, L.C. cites no  
22 authority that requires a school district to amend any internal notes of IEP team meetings

1 in accordance with a parent’s wishes. (*See generally id.*) Moreover, the court finds that,  
2 regardless of the alleged deficiencies in the District’s internal records of the IEP team  
3 meetings, the PWNs the District produced comprehensively and accurately documented  
4 the Parents’ input and concerns. (*See* AR at 3049-50, 3102-03.) Finally, even if the court  
5 were to disregard the District’s notes and rely exclusively on the amended records  
6 produced by L.C. (*see id.* at 3299-306, 3327-41), the court would still find that the  
7 District afforded the Parents an opportunity to meaningfully participate in the IEP  
8 process.<sup>17</sup>

9 L.C.’s remaining arguments regarding parental participation are at odds with the  
10 record. L.C. argues that the IEP team “forced” the Parents to sign A.S.’s 2016 IEP by  
11 telling them it was an “attendance sheet.” (L.C. MSJ at 28.) L.C. cites no credible  
12 evidence to support that contention. (*See generally id.*) Additionally, L.C. argues that it  
13 was not clear to the Parents who was on A.S.’s IEP team. (*Id.* at 34.) But, the Parents  
14 attended numerous meetings attended by all members of A.S.’s IEP team, the IEP team  
15 documents clearly identify the members of the IEP team, and L.C. herself emailed several  
16 members of the IEP team on multiple occasions. (*See, e.g.,* AR at 2964, 3008, 3089,  
17 3112.) L.C. also insists that A.S.’s IEPs had numerous typographical errors, which  
18 “confused the Parents on [A.S.’s] specific IEP goals and measurements.” (L.C. MSJ at

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19  
20 <sup>17</sup> Additionally, L.C. argues that the ALJ relied only on the District’s records of the IEP  
21 meetings and “ignor[ed] [L.C.’s] amended notes” when making her findings and conclusions.  
22 (L.C. MSJ at 35.) In fact, the ALJ cited and relied upon a version of L.C.’s notes in making her  
factual findings. (*See* ALJ FF ¶¶ 58, 72-73 (citing Parents’ Exhibit 10, found at AR at  
3298-403).)

31.) Because L.C. did not raise this issue at the due process hearing, it falls outside the scope of the court’s review. (*See* ALJ Order at 2-6.) In any event, L.C. fails to show exactly how any typographical errors in A.S.’s IEPs impeded the Parents’ ability to participate in the IEP process. (*See generally* L.C. MSJ.) Finally, L.C. argues that the District did not adequately explain A.S.’s modified grading system. (*Id.* at 33.) The record shows, however, that the District explained the grading system to the Parents and the Parents raised no questions at that time. (AR at 4136.) L.C. cites no evidence that the Parents subsequently expressed to the District any questions or concerns about the grading system. (*See generally* L.C. MSJ.)

The IDEA does not require a school district comply with every request a parent makes; rather, the district must “seriously consider” the parents’ input and concerns. *K.S. ex rel. P.S. v. Fremont Unified Sch. Dist.*, 545 F. Supp. 2d 995, 1008 (N.D. Cal. 2008). The record shows that the District did precisely that. The ALJ correctly concluded that the District afforded the Parents an opportunity to meaningfully participate in the IEP process.

ii. Predetermination

Relatedly, L.C. argues that the District “predetermined” A.S.’s educational placement and IEP content without parental input. (L.C. MSJ at 29-30.) “A school district violates the IDEA if it predetermines placement for a student before the IEP is developed or steers the IEP to the predetermined placement.” *K.D. ex rel. C.L. v. Dep’t of Educ., Hawaii*, 665 F.3d 1110, 1123 (9th Cir. 2011). “Predetermination violates the

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1 IDEA because the Act requires that the placement be based on the IEP, and not vice  
2 versa.” *Id.*

3 L.C.’s predetermination claim appears to have two parts. First, L.C. alleges that,  
4 in 2016, during A.S.’s third-grade year, Ms. Schoot and Ms. Van de Vord held an IEP  
5 meeting “to decide [A.S.’s] present levels, curriculum, and computer accommodations  
6 without [the] Parents being informed or present or calling an IEP meeting.” (*Id.* at 30.)  
7 Second, L.C. asserts that the District predetermined A.S.’s placement because the IEP  
8 presented at the October 27, 2016, IEP team meeting did not reflect the “changes” the  
9 Parents suggested to the draft IEP before the meeting. (*Id.*)

10 L.C.’s predetermination claim fails for several reasons. First, L.C. appears not to  
11 have argued in the due process hearing that the District predetermined A.S.’s educational  
12 placement. (*See generally* ALJ Order at 2-6; AR at 2904-07.) The issue is thus outside  
13 the court’s review. Even if the Parents’ due process complaint could be construed to  
14 raise a predetermination claim, L.C. cites no credible evidence to support her allegation  
15 that the District predetermined A.S.’s 2016 educational placement before the October 27,  
16 2016, IEP meeting. (*See generally* L.C. MSJ.) To support her contention that the District  
17 held an IEP meeting without the Parents, she cites only the testimony of Ms. Schoot that,  
18 on one occasion, Ms. Schoot “had a conversation” with Ms. Van de Vord—without the  
19 rest of the IEP team—about the fact that a particular speech-to-text program on A.S.’s  
20 computer was not working. (Tr. 1776:3-19; *see also* L.C. MSJ at 30.) That conversation  
21 neither affected A.S.’s educational placement nor excluded the Parents from the IEP  
22 process.

1        Additionally, the court is unpersuaded that the District “predetermined” A.S.’s  
2 educational placement because it did not modify the draft IEP in accordance with the  
3 Parents’ preferences. (L.C. MSJ at 30.) Far from rejecting out-of-hand the Parents’  
4 proposed changes to the 2016 IEP, the IEP team both carefully communicated their  
5 concerns about some of the Parents’ requests before the IEP team meeting and  
6 thoroughly discussed those requests at the meeting. (AR at 3082-86, 3102-03.) That  
7 members of the IEP team may have had “pre-formed opinions” regarding A.S.’s  
8 placement and accommodations is irrelevant. *See S.P. ex rel. Penalosa v. Scottsdale*  
9 *Unified Sch. Dist. No. 48*, No. 2:12-cv-01193 JWS, 2013 WL 5655527, at \*6 (D. Ariz.  
10 Oct. 13, 2013) (explaining that “school evaluators may prepare reports and come with  
11 pre-formed opinions regarding the best course of action for the child as long as they are  
12 willing to listen to the parents and parents have the opportunity to make objection and  
13 suggestions”) (quoting *Nack v. Orange City Sch. Dist.*, 454 F.3d 604, 610 (6th Cir.  
14 2006)). The court thus rejects L.C.’s predetermination claim.

15                    iii. Expiration of the IEP

16        L.C.’s final procedural claim relates to the expiration of A.S.’s 2015 IEP. (L.C.  
17 MSJ at 32.) The ALJ found that the District allowed A.S.’s 2015 to expire three days  
18 before the 2016 IEP took effect. (ALJ Order ¶¶ 63-64.) Although the ALJ found that  
19 this lapse constituted a procedural violation of the IDEA, she concluded that the District  
20 did not deny A.S. a FAPE because the 2016 IEP went into effect just three days later.

21 (*Id.*)

22 //

1 An ALJ may find that a school district’s procedural violation denied a child a  
2 FAPE only where the procedural violation: (1) impeded the child’s right to a FAPE; (2)  
3 infringed the parent’s opportunity to participate in the decision-making process regarding  
4 the provision of a FAPE; or (3) caused a deprivation of educational benefits. 34 C.F.R.  
5 § 300.513(a)(2); WAC 392-172A-05105(2); *see also J.L. v. Mercer Island Sch. Dist.*, 592  
6 F.3d 938, 953 (9th Cir. 2010). The ALJ correctly found that the Parents failed to show  
7 that the expired IEP impeded A.S.’s right to a FAPE, impeded the Parents’ opportunity to  
8 participate in the IEP process, or otherwise deprived A.S. of an educational benefit. (*See*  
9 ALJ CL ¶¶ 63-64.)

10 *b. Alleged Substantive Violations*

11 “To meet its substantive obligation under the IDEA, a school must offer an IEP  
12 reasonably calculated to enable a child to make progress appropriate in light of the child’s  
13 circumstances.” *Endrew F.*, 137 S. Ct. at 999. To accomplish this goal, the IEP team  
14 must consider a child’s current levels of academic achievement, describe how a child’s  
15 disability affects his or her ability to perform, and set measurable goals of academic  
16 progress for the upcoming year. *See* 20 U.S.C. § 1414(d)(1)(A)(i). Above all, the IEP  
17 team is charged with developing a “comprehensive plan” that is “tailored to the unique  
18 needs’ of a particular child.” *Endrew F.*, 137 S. Ct. at 994 (quoting *Rowley*, 458 U.S. at  
19 181).

20 L.C. argues that the District failed to uphold its substantive obligation under the  
21 IDEA because: (1) A.S.’s IEPs did not integrate a dyslexia-specific curriculum; (2)  
22 District staff were not specifically trained to work with children with dyslexia; (3) the

1 IEPs did not address all areas of A.S.’s disability; (4) the IEP team failed to set  
2 appropriate goals; (5) the IEPs did not include appropriate accommodations; and (6) the  
3 IEPs did not provide ESY services. The court addresses these arguments in turn.

4 i. Dyslexia-Specific Instructional Methodology

5 L.C. argues that A.S.’s IEPs failed to meet her “unique needs” because the IEPs  
6 “lump[ed] [A.S.] in with students having other [specific learning disabilities]” and failed  
7 to rely upon methods or curricula designed specifically for a student with dyslexia. (L.C.  
8 MSJ at 1; *see also id.* at 2, 8, 39.) Construed liberally, L.C.’s arguments put two issues  
9 before the court: Did the IDEA require that the District incorporate dyslexia-specific  
10 methodologies into A.S.’s IEPs? And, if not, were A.S.’s IEPs sufficiently tailored to  
11 meet her unique needs?

12 The ALJ correctly concluded that the District was not obligated to integrate  
13 dyslexia-specific methodologies or curricula into A.S.’s IEP. (*See* ALJ CL ¶ 32.) School  
14 districts “are entitled to substantial deference in deciding what programming is  
15 appropriate as a matter of educational policy,” *Mercer Island Sch. Dist.*, 592 F.3d at 945  
16 n.5 (citing *Rowley*, 458 U.S. at 206), and need not specify an instructional methodology  
17 in an IEP unless that methodology is necessary to enable the student to receive a FAPE,  
18 *id.* at 952 (citing 64 Fed. Reg. 12,552). Courts have repeatedly held that parents do not  
19 have a right to compel a school district to employ a specific curriculum or methodology  
20 when educating a child with a disability. *See, e.g., Tucker v. Calloway Cty. Bd. of Educ.*,  
21 136 F.3d 495, 506 (6th Cir. 1998) (“Case law is clear that the [parents] are not entitled to  
22 dictate educational methodology or to compel a school district to supply a specific

1 program for their disabled child.”); *see also D.T. v. Seattle Sch. Dist.*, No. C10-0759JLR,  
2 2011 WL 5282715, at \*13 (W.D. Wash. Nov. 2, 2011). Relatedly, courts have concluded  
3 that, absent a showing that dyslexia-specific methods are necessary to ensure that a child  
4 with dyslexia receives an appropriate education, school districts may lawfully decline to  
5 integrate those methods into an IEP. *See, e.g., Robinson ex rel. Robinson v. Council Rock*  
6 *Sch. Dist.*, No. 05-1988, 2006 WL 1983180, at \*5-6 (E.D. Penn. July 12, 2006) (holding  
7 that a dyslexic child’s IEP provided a FAPE, “despite its lack of comprehensive phonics  
8 program designed to treat dyslexia,” because it was specifically designed to meet the  
9 student’s needs in the area of written expression); *see also Wood v. Katy Indep. Sch.*  
10 *Dist.*, 163 F. Supp. 396, 418-19 (S.D. Tex. 2015).

11 Here, L.C. does not show that A.S. required a dyslexia-specific instructional  
12 methodology to receive a FAPE. L.C. relies exclusively on the opinions of Ms. Anthony,  
13 who testified that students like A.S. require “a multisensory approach[] [to] instruction  
14 that is explicit and direct” and asserted that it is “absolutely imperative” that educators  
15 use such methods in teaching dyslexic children. (Tr. 1505:13-1506:11.) Ms. Anthony  
16 also stated that she would recommend Orton-Gillingham instruction for A.S. (*Id.*  
17 1505:17-21, 1523:3-6.) As explained above, the ALJ appropriately gave Ms. Anthony’s  
18 testimony “little weight” because Ms. Anthony never met A.S., never spoke with A.S.’s  
19 teachers, and primarily based her opinions on discussions with L.C. and document  
20 review. *See supra* § III.C.1.c.; (*see also* ALJ FF ¶ 83.) Even if the court were to credit  
21 Ms. Anthony’s testimony on dyslexia-specific curricula, however, it would establish only  
22 that, in the long run, A.S. would best be served by the programmatic interventions Ms.



1 Anthony endorsed. *See Robinson*, 2006 WL 1983180, at \*6. Yet, the IDEA does not  
2 require the District to design a program to maximize A.S.’s educational potential: the  
3 IEP must only be “reasonably calculated to enable a child to make progress appropriate in  
4 light of the child’s circumstances.” *Endrew F.*, 137 S. Ct. at 999.

5 The record demonstrates that A.S.’s IEPs were reasonably calculated to enable  
6 A.S. to make progress in light of her disability. Pursuant to the 2015 initial evaluation,  
7 A.S.’s IEP team appropriately concluded that A.S. was eligible for specially designed  
8 instruction in two areas: reading and written expression. (AR at 2961.) The IEP team  
9 therefore arranged for A.S. to receive specially designed instruction in reading, specially  
10 designed instruction in writing, and numerous accommodations in the general education  
11 setting. (*Id.* at 3023-24, 3026.) The uncontroverted evidence shows that, even after just a  
12 few months, A.S. was progressing in both her specially designed instruction and in the  
13 general education curriculum. From November 2015 to October 2016, for example, A.S.  
14 progressed from level “G” to level “J” in the F&P reading assessment program.<sup>18</sup> (*Id.* at  
15 3044, 3092; *see also id.* at 3031-34 (documenting progress toward or satisfaction of  
16 short-term objectives in reading comprehension and writing).) Moreover, at the hearing,  
17 A.S.’s teachers credibly testified that A.S. demonstrated meaningful progress under her  
18 IEPs, even if she did not yet meet all grade-level expectations. (*See* Tr. 1095:16-1096:7,  
19 1099:12-15, 1181:17-1183:21, 1871:8-1874:21 (testimony of Ms. Schoot); *id.*  
20 615:25-616:13, 714:24-715:3, 729:19-25, 730:7-734:23, 739:17-740:13 (testimony of

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21  
22 <sup>18</sup> Additionally, Ms. Schoot testified that, as of December 2016, A.S. was reading at F&P  
level “M.” (Tr. 1871:11-19.)

1 Ms. Clark).) L.C. fails to show that A.S.'s IEP was insufficiently tailored to meet her  
2 unique needs.

3 ii. Teacher Training

4 L.C. further appears to argue that A.S.'s IEPs were inadequate because the District  
5 staff who implemented the IEPs were not specifically trained to work with children with  
6 dyslexia. (L.C. MSJ at 8, 15.) The proper inquiry, however, is not whether A.S.'s  
7 teachers were trained to teach dyslexic students, but rather whether District staff were  
8 sufficiently trained to implement the IEP. *See, e.g., Ganje ex rel. J.M.G. v. Depew Union*  
9 *Free Sch. Dist.*, No. 11-CV-00665-RJA-JJM, 2012 WL 5473491, at \*11 (W.D.N.Y. Sept.  
10 26, 2012), *report and recommendation adopted*, No. 11-CV-665A, 2012 WL 5473485  
11 (W.D.N.Y. Nov. 9, 2012) (rejecting the parent's claim that the District was required to  
12 provide teachers "trained in teaching dyslexic students"). L.C. provides no evidence that  
13 A.S.'s educators lacked the training necessary to fully implement A.S.'s IEP. (*See*  
14 *generally* L.C. MSJ.) Indeed, the District's educators credibly testified that they were  
15 adequately trained to address A.S.'s disabilities in reading and writing. (*See, e.g.,* Tr.  
16 703:20-704:4, 1057:9-12, 1112:22-24; *see also* AR at 4321-25.) The ALJ properly  
17 concluded that the District did not violate the IDEA by not implementing A.S.'s IEPs  
18 through educators trained in dyslexia-specific instruction. (*See* ALJ Order CL ¶ 42.)

19 iii. Areas of Disability

20 L.C. also appears to contend that A.S.'s IEPs failed to provide specially designed  
21 instruction in all areas of A.S.'s disability. (*See* L.C. MSJ at 31-32, 41-43.) Specifically,  
22 L.C. insists that A.S. was eligible for specially designed instruction in math and A.S.'s

1 IEP should have included social skills goals. (*See id.*) With respect to math, the District  
2 properly concluded that, based on the 2015 initial evaluation, A.S.’s math skills were in  
3 the average range and A.S. did not qualify for specially designed math instruction. (AR  
4 at 2977, 2993.) Likewise, the District properly concluded that, considering the 2016  
5 math reassessment, A.S. “[did] not have a Specific Learning Disability in math.” (*Id.* at  
6 3121.) With respect to social skills, the District reasonably concluded that, based on the  
7 2015 initial evaluation, A.S. did not require specially designed instruction in  
8 social-emotional functioning. (*Id.* at 2961-62, 2971-72.) L.C.’s objections regarding the  
9 lack of specially designed instruction in math and social skills are unfounded.

#### 10 iv. Appropriateness of IEP Goals

11 L.C. asserts that A.S.’s IEP goals were deficient for various reasons. (L.C. MSJ at  
12 38-39.) First, she contends that the 2016 IEP goals were deficient because they were  
13 “substantially the same as the second grade IEP goals.” (*Id.* at 38.) That argument lacks  
14 merit. The 2015 and 2016 goals appropriately targeted the same areas—reading and  
15 written expression. However, the 2016 goals included updated, and more ambitious,  
16 metrics in reading, reading comprehension, and writing. (*Compare* AR at 3020-22 *with*  
17 *id.* at 3092-93.) That the goals were similar is reasonable, as well as irrelevant to whether  
18 the goals were deficient.

19 L.C. also contends that A.S.’s IEP goals “were not appropriately ambitious in light  
20 of [A.S.]’s circumstances of being dyslexic.” (L.C. MSJ at 38-39.) She relies on Ms.  
21 Anthony’s testimony for support. (*Id.*) According to Ms. Anthony, A.S.’s 2015 IEP  
22 failed to address issues of “phonological awareness” and set only “pretty generic” goals.

1 (Tr. 1551:5-10.) Similarly, Ms. Anthony opined that A.S.’s 2016 IEP goals were targeted  
2 to “fluency and reading comprehension skills without addressing the foundation that has  
3 to be in place for those other goals to be met.” (*Id.* 1595:14-20.) Again, the ALJ  
4 appropriately gave little weight to Ms. Anthony’s testimony about A.S.’s IEP goals. *See*  
5 *supra* § III.C.1.c. In addition, as emphasized above, the District was not obligated to  
6 formulate IEP goals that tracked a dyslexia-specific curriculum or methodology, as long  
7 as the goals met the needs resulting from A.S.’s disability and were reasonably calculated  
8 to support her educational progress. *See supra* § III.C.3.b.i; *see also Endrew F.*, 137 S.  
9 Ct. at 999. The record suggests that A.S.’s IEP goals satisfied both counts. (*See, e.g.*,  
10 AR at 3092-93 (documenting that A.S. met or progressed toward all her 2015 IEP goals);  
11 *see also* Tr. 1095:16-1096:7, 1099:12-15, 1181:17-1183:21, 1871:8-1874:21 (testimony  
12 of Ms. Schoot); *id.* 615:25-616:13, 714:24-715:3, 729:19-25, 730:7-734:23,  
13 739:17-740:13 (testimony of Ms. Clark).)

14 Accordingly, the ALJ properly rejected L.C.’s claim that A.S.’s IEP goals were  
15 inappropriate. (*See* ALJ CL ¶¶ 35-36, 51-53.)

#### 16 v. Accommodations

17 L.C. also argues that the District failed to provide appropriate accommodations in  
18 A.S.’s IEPs. (L.C. MSJ at 39.) L.C. appears to argue that the District erroneously  
19 “carried over” to the 2016-17 school year certain accommodations adopted during the  
20 2015-16 school year. (*Id.*) L.C. fails to explain, however, why any of these  
21 accommodations were inappropriate or inadequate. (*See generally id.*) L.C. also claims  
22 that the District denied “all” of the Parents’ requested accommodations and, in particular,

1 refused to grant the Parents’ request to amend the IEP to remove the use of Co:Writer.  
2 (*Id.* at 40.) Yet, the IEP team adopted several of the Parents’ requested accommodations  
3 (*see* AR at 3051) and gave reasonable explanations for declining to adopt others (*see*,  
4 *e.g.*, *id.* at 3049-50, 3102-03). Moreover, L.C. cites no evidence to support her  
5 contention that the Parents informed the District that they were dissatisfied with  
6 Co:Writer and asked that it be removed from the IEP. (*See generally* L.C. MSJ.) The  
7 ALJ properly found that A.S.’s IEPs included appropriate accommodations. (*See* ALJ  
8 CL ¶¶ 49-50.)

9 vi. Extended School Year (“ESY”) Instruction

10 L.C. contends that the District denied A.S. a FAPE because it failed to provide  
11 ESY services during her second- and third-grade years. (L.C. MSJ at 33.) The Parents  
12 did not raise a claim regarding ESY services before the ALJ, and this issue falls outside  
13 the court’s review. (*See* ALJ Order at 2-6.) Moreover, even if the Parents had raised a  
14 claim regarding ESY, L.C. fails to show that ESY services were “necessary to permit  
15 [A.S.] to benefit from [her] instruction.” *Hellgate Elementary*, 541 F.3d at 1212  
16 (explaining that ESY services are integral to a FAPE only when the benefits a child gains  
17 during a regular school year will be significantly jeopardized if she is not provided ESY  
18 services during the summer) (internal quotation marks and citation omitted).

19 c. IEP Implementation

20 L.C. appears to argue that the ALJ erred in finding that the Parents failed to show  
21 that the District materially failed to implement A.S.’s IEP. (*See* L.C. MSJ at 33, 40; *see*  
22 *also* ALJ CL ¶ 60.) Specifically, L.C. asserts that A.S.’s IEP team failed to inform the

1 Parents that the Co:Writer program on A.S.'s computer did not always function. (L.C.  
2 MSJ at 33, 40.) Even if the court assumes that A.S. was at times unable to use her  
3 computer, L.C. cites no evidence to support "more than a minor discrepancy" between  
4 the services required by A.S.'s IEP and the services the District provided. *See Van Duyn*,  
5 502 F.3d at 815 (holding that a school district violates the IDEA only if "it is shown to  
6 have materially failed to implement the child's IEP," and "[a] material failure occurs  
7 when there is more than a minor discrepancy between the services provided to a disabled  
8 child and those required by the IEP"). The ALJ correctly found that the Parents failed to  
9 demonstrate that the District materially failed to implement A.S.'s IEP. (*See* ALJ CL  
10 ¶ 60.)

11 *d. A.S.'s Educational Progress*

12 Finally, L.C. appears to argue that the District denied A.S. a FAPE in the 2015-16  
13 and 2016-17 school years because A.S. did not "progress[]." (L.C. MSJ at 18-19.) The  
14 record does not support L.C.'s contention that A.S. failed to demonstrate meaningful  
15 educational progress. In 2015, for example, A.S. met or progressed toward all four of her  
16 IEP goals. (AR at 3092-93.) From November 2015 to October 2016, A.S. progressed  
17 from instructional level "G" to instructional level "J" in the F&P reading assessment  
18 program. (*Id.* at 3044, 3092; *see also* Tr. 1871:11-19.) And, as A.S.'s teachers credibly  
19 testified, A.S. exhibited significant academic gains in both the 2015-16 and 2016-17  
20 school years. (*See* Tr. 1095:16-1096:7, 1099:12-15, 1181:17-1183:21, 1871:8-1874:21  
21 (testimony of Ms. Schoot); *id.* 615:25-616:13, 714:24-715:3, 729:19-25, 730:7-734:23,  
22 739:17-740:13 (testimony of Ms. Clark); *id.* 2061:5-2063:20, 2111:11-2112:7 (testimony

1 of Ms. Van de Vord.) L.C. provides no credible evidence to refute these indications that  
2 A.S. made meaningful educational progress under her IEPs.<sup>19</sup>

#### 3 4. Summary

4 The court acknowledges that the Parents are committed to ensuring that A.S.  
5 receives the education she is due under the law. Yet, the IDEA does not require that the  
6 District provide A.S. the best possible education at public expense; nor does it obligate  
7 the District to enable A.S. to maximize her academic potential. *See Endrew F.*, 137 S.  
8 Ct. at 1001. Rather, the IDEA demands that the District provide A.S. “an educational  
9 program reasonably calculated to enable [her] to make progress in light of [her]  
10 circumstances.” *Id.* For the reasons discussed above, the District upheld that obligation.  
11 The ALJ properly found that A.S. is not entitled to an IEE at District expense and that the  
12 Parents failed to show that the District denied A.S. a FAPE in the 2015-16 and 2016-17  
13 school years.

#### 14 IV. CONCLUSION

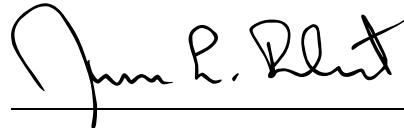
15 For the foregoing reasons, the court DENIES L.C.’s motion to amend the  
16 complaint (Dkt. # 64), DENIES L.C.’s motion for summary judgment (Dkt. # 34),  
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18 <sup>19</sup> At the hearing, the Parents asked A.S. to read aloud to the ALJ. (*See* Tr.  
19 130:22-131:9.) L.C. argues that the ALJ “dismissed” A.S.’s “reading testimony.” (L.C. MSJ at  
20 19.) The ALJ properly gave little weight to A.S.’s reading demonstration because it lacked  
21 context and did not take place in an educational setting. (ALJ FF ¶ 82.) Additionally, L.C.  
22 appears to argue that the ALJ erroneously overlooked various pieces of A.S.’s work, introduced  
by the Parents, that allegedly showed A.S.’s lack of progress in math, writing, and other areas.  
(*See* L.C. MSJ at 20-22; L.C. Reply at 15-18; *see also, e.g.*, AR at 3783-3887.) The ALJ  
appropriately emphasized that the work samples lacked context and “do not carry greater weight  
than the testimony of the teachers who work with [A.S.] on a regular basis and evaluate her  
work.” (ALJ FF ¶ 82.)

1 GRANTS the District's motion for summary judgment (Dkt. # 35), and AFFIRMS the  
2 order of the ALJ. The court DIRECTS the clerk to enter judgment for the District and  
3 close this case.

4 Dated this 8th day of May, 2019.

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7 The Honorable James L. Robart  
8 U.S. District Court Judge  
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